SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 365.

THE UNITED STATES, PETITIONER,

vs.

FRANK DUDLEY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Caption	a	1
Transcript from the circuit court of the United States for the district of Vermont	1	1
Caption	1	1
Petition	2	1
Order for return	6	3
Return	7	3
Exhibit B. Letter, special deputy collector to Board of United States General Appraisers, submitting protest	9	4
C. Protest	10	5
E. Opinion of Board of United States General Appraisers	19	9
F. Opinion of Board of United States General Appraisers (G. A. 3131)	21	10
D. Testimony taken before the Board	23	10
Testimony of Frank Dudley	23	10
John Hubbard Howry	29	14
Madison W. Ripley	34	18
Herbert K. Blanchard	38	21
W. S. Marsh	43	25
Charles M. Robinson	45	26
Charles A. Meigs	50	30
Arthur C. Dutton	53	32
Charles A. Meigs (recalled)	57	35
Adelbert B. Twitchell	58	36
Charles L. Adams	63	40
Rufus Resseguie	69	44
A. P. Cooke	76	49

	Original.	Print.
Transcript from the circuit court of the United States for the district of Vermont—Continued.		
Testimony of Samuel A. Skead	78	50
Charles L. Adams (recalled)	80	52
Stephen D. Pierce	81	52
George W. Egbert	84	55
Frederick W. Cole	86	56
William E. Marsh	90	59
Guy E. Robinson	91	60
Robert W. Higbie	93	62
William B. Millard	93	62
Frank Dudley (recalled)	108	73
William B. Millard (recalled)	114	77
Arthur H. Brewer	126	87
Eugene B. Abbott	134	92
George W. Hotchkiss	137	94
Leroy Clark	144	99
Frank Dudley (recalled)	147	101
William L. Proctor	149	102
John S. Loomis	157	109
Thomas A. Lake	163	113
Henry C. Howe	167	116
Charles H. Getman	171	119
Robert C. Lippincott	175	122
John W. Robinson	178	124
Carroll S. Page	182	127
Marcus M. Darr	185	130
John S. Estabrook	190	134
E. B. Freeman	195	137
Carleton M. Smith	196	138
James N. Willard	198	140
Pendennis White	200	141
Everit C. Baker	202	143
David G. Crane	205	145
Elmer O. Lake	207	147
Thomas F. Strong	208	148
Oscar C. Miller	212	151
D. W. Robinson	217	154
Thomas S. Quinn	220	157
James D. McLaurin	224	160
Order for further evidence	226	161
Return of further evidence	227	162
Testimony of Walter F. Ford	228	162
Opinion, Wheeler, J	251	178
Motion for appeal	254	180
Notice of appeal	255	180
Assignment of errors	256	181
Citation	259	182
Clerk's certificate	260	182
Decision	261	183
Petition for rehearing	261	183
Clerk's certificate	264	184
Writ of certiorari	265	184
Return to writ of certiorari	268	185
Stipulation as to return	269	185

a

United States circuit court of appeals for the second circuit. The United States, appellant, vs. Frank Dudley, appellee. [No. 1301.] Transcript of record. Appeal from the circuit court of the United States for the district of Vermont. Printed under the direction of the clerk. United States circuit court of appeals, second circuit. Filed Sep. 11, 1896. James C. Reed, clerk.

1 Circuit court of the United States, district of Vermont.

FRANK DUDLEY
vs.
THE UNITED STATES.

Be it remembered that on the 20th day of November, A. D. 1895, Frank Dudley, of Portland, Maine, filed his petition for review as to certain decisions of the Board of United States General Appraisers, in the matter of certain merchandise imported into the collection district of Vermont, which said petition is in the words and figures following:

2 United States circuit court, district of Vermont.

In the matter of certain merchandise imported by Frank Dudley, of Portland, Me., into the collection district of Vermont, to wit, into the port of Newport.

To the honorable the United States circuit court for the district of Vermont:

Now comes Frank Dudley, your petitioner, and respectfully shows that he was and is in trade, doing business in Portland, Me., under the firm name of Frank Dudley; that he duly imported into the United States and entered for consumption at the said port of Newport the merchandise described in the schedule hereto annexed, and that the collector of customs for the said district of Vermont, through his deputy at said port, decided as to the rate and amount of duties chargeable upon said merchandise, and so assessed and liquidated the same, which rate and amount of duties your petitioner alleges were in excess of those authorized by law; and that upon all said goods entered for consumption said excessive duties have been duly paid.

That within the time required by law, protest in writing was duly made to the collector of customs, giving notice to him distinctly and specifically, and in respect to each entry and payment the reasons for objection to his said decision, assessment, and liquidation of duties upon said merchandise; and thereafter, and within the past thirty days
3 from the date of this petition, a decision upon said protests was made by a Board of United States General Appraisers, as by the statute provided, adverse to the contention of your petitioner, with which decision your petitioner is dissatisfied, and presents the following as a statement of errors of law and fact in said decision complained of:

Statement of errors.

First. That the said Board of United States General Appraisers erred in deciding that the imports in question were not entitled to entry upon

importation into the United States free of duty as "sawed boards, plank * * * or other lumber, rough or dressed," under the provisions of paragraph 676 of the free list of the tariff act of the United States of Aug. 28th, 1894.

Second. That the said Board erred in not considering and deciding whether or not the imports in question were "sawed boards, * * * plank or other lumber, rough or dressed," within the interest of the provisions of said paragraph 676.

Third. That the said Board erred in deciding that the imports in question were not dressed lumber in fact, and as known, considered, and dealt in by buyers, sellers, and users of lumber; and further erred in not deciding that the imports in question were dressed lumber or lumber dressed, as known in the trade in 1894, within the interest of the provisions of said paragraph 676.

Fourth. That the said Board erred in deciding that the imports in question were manufactures of wood within the scope and interest, or as known in the trade in 1894, of the provisions of paragraph 181, Schedule D, of said act of Aug. 28th, 1894; and further erred in not deciding that the imports in question were not manufactures of wood not specially provided for, as known in the trade in 1894, or within the scope and interest of the provisions of said paragraph 181.

4 Fifth. The said Board erred in not deciding that under the laws of the United States in force at the time of the importations in question these imports were not subject upon importation to any duties whatever.

That the following is a schedule of the importations embraced in this petition, viz:

Description of merchandise.	Name of vessel.	Date of entry.	Date of protest.	Date of decision.
Sawed boards and plank planed one side, tongued and grooved, or planed one side and grooved, entered at the custom-house as dressed lumber.		1895.	1895.	1895.
	Railroad cars—	June 26	June 28	Oct. 29
	Nos. 53, 6953, 13700, 11814, 15114, 30080, 39.	" 26	" 28	" 29
		" 26	" 28	" 29
		" 26	" 28	" 29
		" 26	" 28	" 29
		" 26	" 28	" 29
	No. 22118.....	" 27	" 28	" 29

That the aforesaid adverse decisions of said Board of United States General Appraisers were and are unwarranted by law, and in damage to your petitioner for the full amount of excessive duties paid, with interest from date of payment, and costs of this action.

Wherefore your petitioner prays this honorable court for its review, decision, and judgment upon the questions of law and fact involved in the decisions of said Board of United States Appraisers heretofore made in the case of each of the above importations of merchandise as to the classification and rate of duty assessed upon said merchandise, and for that purpose pray that an order may be entered requiring the said Board of United States General Appraisers to return to said circuit court the

record and evidence taken by them, together with a certified statement of the facts involved in each of the above cases and their decisions thereon.

5 And your petitioner further prays for such additional orders and relief, under the laws of the United States in such cases made and provided, as they may in the judgment of this honorable court be entitled to.

Dated Newport, Vt., Nov. 6, 1896.

FRANK DUDLEY,
Petitioner.
By C. A. PROUTY,
J. P. TUCKER,
Attorneys.

BURLINGTON, *Nov. 19, 1895.*

I certify that I have this day served upon the collector of customs at this port a true copy of this petition.

C. A. PROUTY.

6 And afterwards, and on the 29th day of November, A. D. 1895, an order was entered for the Board of United States General Appraisers to return record, evidence, &c., to this court, which said order is in the words and figures following:

United States circuit court, district of Vermont. In the matter of certain merchandise imported into the port of Newport by Frank Dudley.

DISTRICT OF VERMONT, *ss:*

Upon reading and filing the petition of Frank Dudley, asking, for reasons therein set forth, that this court review the decision of the Board of United States General Appraisers affirming the decision of the collector of customs for the district of Vermont assessing said duties at the rate and amount as therein fully set forth:

It is hereby ordered, upon hearing and for good cause shown, that said Board of United States General Appraisers return to this court the record and evidence taken by them, together with a certified statement of the facts involved in said cases and their decisions thereon.

Done in court at Brattleboro, in said district, this 29th day of November, A. D. 1895.

HOYT H. WHEELER, *Judge.*

7 And afterwards, and on the 4th day of December, A. D. 1895, John H. Senter, United States attorney for the district of Vermont, entered and appeared for and on behalf of the United States.

And afterwards, and on the 12th day of December, A. D. 1895, the return of the Board of United States General Appraisers, together with the testimony (Exhibit E) taken by said Board in said cause, was duly

filed in this cause; which said return and testimony are in the words and figures following:

In the circuit court of the United States for the district of Vermont.

[L. S.]

In the matter of the application of Frank Dudley for a review of the decision of the Board of U. S. General Appraisers as to the rate and amount of duties chargeable upon certain merchandise imported by him per railroad, and entered June 26th and 27th, 1895. Suit No. 1301. Return of the Board of United States General Appraisers to the order of Hon. Hoyt H. Wheeler, judge. Dated New York, Dec. 9, 1895.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

8 They state that a letter, hereto annexed, marked "Exhibit B," was received from the collector of customs at Burlington, Vt., transmitting under the provisions of section 14 of the act of June 10, 1890, the protest, marked "Exhibit C," described as follows:

Coll's No.	Board No.	Protestant.	Vessel.	Date of entry.
226.	27625–B.	F. Dudley.	Ry. cars.	June 26 & 27, 1895.

That on the 24th and 25th days of July, 1895, the testimony of numerous witnesses was taken by the Board in the matter of the protest 27625–B, which testimony is made a part of this return. The testimony and the samples introduced in evidence herein and referred to therein are returned for convenience in separate packages, marked "Exhibit D" for the testimony, and Exhibits 1 to 29, both inclusive, for the samples, the latter package being in the form of a wooden box, marked as above stated.

There are also returned herewith, marked "Exhibit A," certain papers which are referred to on page 150 of the testimony herein.

That on the 29th day of October, 1895, the Board of U. S. General Appraisers rendered its decision in the matter of said protest 27625–B, a copy of which decision is hereto annexed, marked "Exhibit E."

The Board also returns herewith the decision in the matter of the protest 27071–B (G. A. 3131), and referred to in the decision of this case, and marked "Exhibit F."

9 EXHIBIT B.

(Cat. No. 182.)

CUSTOM-HOUSE,

Port of Burlington, Vermont, July 2nd, 1895.

I submit herewith the protest described below against my assessment of duty at the rate of 25% on certain spruce lumber claimed to be free of duty under par. 676, act Aug. 28, 1894, and returned by the appraiser as spruce lumber, planed one side, tongued and grooved, and assessed with

duty under par. 181, act of Aug. 28, 1894, in accordance with your ruling of recent date. The requirements of section 14, act of June 10, 1890, have been complied with by the protester. No entries are sent, for the reason that there is no question or dispute as to the character of the lumber, and duties were collected by reason of your decision as to the rate.

Respectfully, yours,

WM. L. GREENLEAF,
Spl. Dep., for Collector of Customs.

To the BOARD OF U. S. GENERAL APPRAISERS, *New York.*

No. 27625-B.	Name of importer.	Vessel.	Date of entry.
226.	F. Dudley.	Ry. cars.	June 26 & 27, 1895.

NOTE.—In transmitting protests the requirements of Article 63, Regulations of August 7, 1890, should be strictly complied with. The number of inclosures should always be stated, and in counting the same each separate, detached paper, or group of papers (fastened together by pins, mucilage, or otherwise), should be counted as one.

No. of inclosures, one.

(Endorsed:) 27625–B. Cat. No. 182. Port of Burlington, Vt., July 2nd, 1895. B. B. Smalley, collector of customs. Transmits protest of F. Dudley. No. of inclosures, one. M.

10 EXHIBIT C.

To the collector of customs for the district of Vermont.

SIR: On June 26th, 1895, I entered at the port of Newport, Vermont, the following lumber: 24 M. of the value of $192, car Nos. 53, 6953; 14 M. of the value of $112, car No. 13700; 12 M. of the value of $120, car No. 11814; 24 M. of the value of $240, car Nos. 30080 and 15414; 12 M. of the value of $96, on car No. 39, and on June 27th, 1895, 12 M. of the value of $96, car No. 22118. I was the owner and importer of all of said lumber, and the same was consigned to O. S. Dane for the purpose of being entered by him at the said port of Newport, and thence transported to various points in the United States, and the same was entered by him in the lots above specified. I further say that all said lumber was spruce lumber, planed, tongued, and grooved, and was so entered by him as dressed lumber and as free of duty, and that it ought to have been so received by your deputy collector at the said port of Newport, but that said deputy held that the same was subject to the payment of a duty of 25% ad valorem as being manufactures of wood under paragraph 181 of the tariff act of 1894, and exacted the payment of such per cent upon the values above given as duties upon the said articles, amounting in all to the sum of $214, which your protestant then paid.

I would respectfully state that I am dissatisfied with the action of your said deputy collector in this respect, for the reason that the said lumber was dressed lumber, and as such entitled to entry free of duty under paragraph 676 of said act, and I hereby protest against the exaction of said duty.

June 28, 1895.

Respectfully,

FRANK DUDLEY,
Of Portland, Maine.

27625–B.

11 (Endorsed:) Protest of F. Dudley relative to duty on dressed spruce lumber. Entry for Cons., Nos. 3696, 3697, 3698, 3699, 3700, 3734. Entry dated June 26 & 27, 1895; liquidated, June 26 & 27, 1895; protest filed, July 1, 1895. Entered duty, $; liquidated, $. $214.00. Burlington, Vt. No. 226. 27625–B. July 1, 1895.

R. E. @ Rec'd 21 Jun.

Order No. 452. Pawtucket. Scotstown, June 19, 1895.
Specification of 1 car; P. 1 S. & M. dry and well dressed.
Shipped to H. E. Wellman, Pawtucket, R. I., via B. & M. and Worcester.
Charged H. E. Wellman. Date, June 21/95. C. B. 28. L.
Duty paid at Newport. Date, June 27/95. Jour. 48. $29.10.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 13700.....	262	1	4	12	1,048		378	1	5	12	1,890
	258			13	1,118		335			13	1,815
	166			14	775		294			14	1,715
	86			15	430		195			15	1,219
	665			16	3,547		626			16	4,173
	1,437				6,918		1,828				10,812

2nd car.

SUMMARY.

Exhibit A.

27625–B.	1,437	1	4	13	6,918
July 25/95.	1,828		5		10,812
	3,265				17,730

12 Order No. 527. Plank. Lake Megantic, June 22nd, 1895.
Specification of 1 car; Mill Run, P. 1 S. & M. Cut 95.
Shipped to F. Dudley, Providence, R. I., via B. & M. and Worcester.
Charged H. E. Wellman. Date, June 25/95. C. B. 44. L. 596.
For free entry at Newport. Date, June 27/95. Jour. 48. $61.45.
With 30080 M. 27173.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 15414.....	242	2	6	16	3,872		91	2	9	16	2,184
	83	"	7	"	1,549		84	"	10	"	2,240
	156	"	8	"	3,328		175				4,424
	481				8,749						

F. DUDLEY.
W. J. K.

13 Rec'd 22 June.
Order No. 524. Bonds. Lake Megantic, June 20th, 1895.
Specification of 1 car; Mill Run. Cut 95.
Shipped to T. D. Potter & Co., Bondsville, Mass., via B. & M. (P. 1 S. & G. & beaded.)

Charged Rice & Lockwood L. Co. Date, June 22/95. C. B. 35. L.
For free entry at Newport. Date, June 27/95. Jour. 48. $31.10.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 11814.	97	3	6	16	2,328		130	3	8	16	4,160
	128	"	7	"	3,584		102	"	9	"	3,672
	225				5,912		232				7,832

F. DUDLEY.
W. J. K.

14 Rec'd 24 June.
Order No. 524. Bonds. Lake Megantic, June 21st, 1895.
Specification of 1 car; Mill Run, P. 1 S. & G. Cut 95.
Shipped to F. Dudley, Bondsville, Mass., via B. & M.
Charged Rice & Lockwood Lumb. Co. Date, June 24/95. C. B. 39. L.
For free entry at Newport. Date, June 27/95. Jour. 48. $61.45.
And 15414 M. 174.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 30080.	90	3	6	16	2,160		9	3	6	10	135
	104	"	7	"	2,912		8	"	7	"	140
	115	"	8	"	3,680		12	"	8	"	240
	70	"	9	"	2,520		49	"	9	"	1,102
	379				11,272		78				1,617

F. DUDLEY.
W. J. K.

15 Rec'd 18 June.
Order No. 305. Holyoke. Scotstown, June 15th, 1895.
Specification of 1 car; P. 1 S. & G. and butted to exact lengths.
Shipped to J. R. Hosmer, Holyoke, Mass., via B. & M.
Charged J. R. Hosmer. Date, June 18/95. C. B. 14. L.
Free entry at Newport. Date, June 27/95. Jour. 48. $49.45. & 53 M. 324.

Initials.	Car No.	Description.	Pieces.	Feet.
C. P.	6953	40 pcs., 3 x 8 x 10	40	800
		169 " 3 x 8 x 20	169	6,760
		22 " 3 x 9 x 10	22	495
		54 " 3 x 9 x 20	54	2,430
		3 " 3 x 10 x 10	3	75
		28 " 3 x 10 x 20	28	1,400
		4 " 3 x 11 x 10	4	110
		33 " 3 x 11 x 20	33	1,815
			353	13,885
		SUMMARY.		
		3 x 8/11 x 10	69	1,480
		" " 20	284	12,405
			353	13,885

16 Rec'd 19 June.
Order No. 305. Holyoke. Scotstown, June 17, 1895.

Specificationof 1 car; P. 1 S. & G. and butted exact lengths.
Shipped to J. R. Hosmer, Holyoke, Mass., via B. & M.
Charged Wm. G. Barker. Date, June 19/95. C. B. 20. L.
Duty paid at Newport. Date, June 27/95. Jour. 48. $49.45. & 6953 M. 323.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 53.....	22	3	8	10	460		92	3	8	20	3, 680
	7		9		158		71		9		3, 195
	7		10		175		60		10		3, 000
	7		11		193		43		11		2, 363
	44				986		266				12, 238

SUMMARY.

44	3	8 to 11	10	986
266			20	12, 238
310				13, 234

17 Rec'd 26 June.
Order No. 546. Russell. Scotstown, June 24th, 1895.
Specification of 1 car; P. 1 S. & G. and butted exact lengths.
Shipped to F. H. Russell, Railroad Ave. crossing, New Haven, Conn., via B. & M. and N. Y., N. H. & Hart. R. R.
Charged Rice & Lockwood L. Co. Date, June 27/95. C. B. 49. L.
Duty paid at Newport. Date, June 27/95. Jour. 48. $25.10.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
B. & M. 22118.....	29	3	7	16½	838		108	3	7	18	3, 402
	38		8		1, 254		76		8		2, 736
	36		9		1, 337		61		9		2, 470
	17		10		700		39		10		1, 755
	120				4, 129		284				10, 363

SUMMARY.

120	3	7 to 10	16½	4, 129
284			18	10, 003
404				13, 132

18 Rec'd 19 June.
Order No. 305. Holyoke. Scotstown, June 17, 1895.
Specification of 1 car; P. 1 S. & G. and butted exact lengths.
Shipped to J. R. Hosmer, Holyoke, Mass., via B. & M.
Charged Wm. G. Barker. Date, June 19/95. C. B. 20. L.
Duty paid at Newport. Date, June 27/95. Jour. 48. $25.10.

Car.	Pieces.	T.	W.	L.	Feet.	Car.	Pieces.	T.	W.	L.	Feet.
C. P. 39.....	25	3	8	10	500		147	3	8	20	5, 880
	22	3	9	10	495		62	3	9	20	2, 790
	13	3	10	10	325		32	3	10	20	1, 600
	3	3	11	10	83		39	3	11	20	2, 145
	63				1, 403		280				12, 415

SUMMARY.

63	3	8 to 11	10	1, 403
280			20	12, 415
343				13, 818

19 EXHIBIT E.

(For publication.)

Before the U. S. General Appraisers at New York, Oct. 29, 1895. In the matter of the protest 27625–B/226, of Frank Dudley, against the decision of the collector of customs at Burlington, Vt., as to the rate and amount of duties chargeable on certain merchandise, imported per railroad, and entered June 26 and 27, 1895.

Opinion by Wilkinson, G. A.:

2–1871.

Representative samples of the merchandise are sawed boards or plank, planed on one or both sides and on the edges, and grooved or tongued and grooved.

The question is similar to that covered by G. A. 3131, but as the protestants alleged that the appellants in the case named did not properly present their side of the issue, the Board granted the request for a reconsideration of the points involved.

At the hearing of the question both the Government and the importers were ably represented by counsel. Of the 46 witnesses examined 22 called by the petitioner testified that the merchandise is known in trade as dressed lumber and 24 called by the Government testified that it is not, and that it had been taken out of the category of dressed lumber by further manipulation after it had been planed on one or both sides. The witnesses on both sides were men of exceptionally high standing, intelligence, and reliability, and no discrimination is possible as to the credibility or quality of the testimony. In numbers the preponderance was against the claim in the protest and in support of the ruling in G. A. 3131.

20 We are of the opinion that the Board should not reverse its own ruling unless the preponderance of evidence were the other way. Moreover, the decision of the collector is to be held presumptively correct, and should not be reversed in the absence of a preponderance of evidence sufficient to overcome the presumption. It may be said also that the view adopted by the collector and the Board has been held by the Treasury Department for many years. In S. S. 204, Sept. 14, 1864, the Secretary of the Treasury defined dressed lumber as follows:

"Lumber, planed, turned, smoothed, or having undergone a similar process but not mortised, tenoned, tongued, or grooved."

It is a fair presumption that if this definition had not met with legislative approval Congress would have been more explicit in the provision for "dressed lumber."

Following G. A. 3131, therefore, we find that the merchandise is not commercially known as dressed lumber, but has passed beyond that description by the processes of tonguing and grooving, which are additional to dressing.

The claim that it is exempt from duty under paragraph 676, act of August, 1894, is overruled accordingly.

(Signed) WILBUR F. LUNT,
J. B. WILKINSON, Jr.,
Board of U. S. General Appraisers.

21 EXHIBIT F.

(G. A. 3131.) Dressed boards, tongued and grooved.

Before the U. S. General Appraisers at New York, June 18, 1895. In the matter of the protest 27071–B, of E. Dillingham, against the decision of the collector of customs at Ogdensburg, as to the rate and amount of duties chargeable on certain merchandise, imported per railroad cars, Central Pacific Railroad.

Opinion by WILKINSON, general appraiser:

The merchandise consists of boards dressed on one side, with the edges planed or jointed and tongued and grooved. It was assessed for duty as a manufacture of lumber at 20 per cent under section 3, act 1894, and is claimed to be exempt from duty as dressed lumber under paragraph 676.

From the evidence in the case it appears that the trade definition of dressed lumber is lumber that is planed or surfaced on one or both sides and brought to an even thickness. When it is further advanced in manufacture by having the edges planed or jointed it is no longer known as dressed lumber, but as shelving, casing, or by other names descriptive of the uses for which it has been prepared. When it has been subjected to the further processes of tonguing and grooving or beading it is known as flooring, sheathing, ceiling, etc.

We find that the merchandise has been advanced beyond the condition of dressed lumber, and that it is a manufacture of wood. It is provided for under paragraph 181.

The protest is overruled.

22 And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

WILBUR F. LUNT,
J. B. WILKINSON, Jr.,
GEORGE H. SHARPE,
Board of U. S. General Appraisers.

23 EXHIBIT D.

[L. S.]

Before the Board of U. S. General Appraisers, Board No. 1, in the matter of the protest of Frank Dudley, 27625–B.

NEW YORK, *July 24th, 1895.*

Present: General Appraiser Lunt, chairman; General Appraiser Sharretts, General Appraiser Wilkinson. J. P. Tucker, esq., for the protestants. W. J. Gibson, esq., for the Government. Hon. Daniel Magone, Thomas Spratt, esq., Edward L. Strong, esq., counsel for the American manufacturers. James A. Russell, stenographer.

FRANK DUDLEY, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. Your full name, Mr. Dudley?

A. Frank Dudley.
Q. Your place of business?
A. Portland, Maine.
Q. And the class of business that you are engaged in?
A. Lumber.
Q. How long?
A. About thirty years.
Q. Where? All the time at Portland?
A. No, sir; Bangor, Maine; Manitoba, Canada; Burlington, Vermont; Portland, Maine.
Q. How long in Portland, Mr. Dudley?
A. Fourteen years, about.
Q. What class of lumber have you dealt in or do you deal in now
A. Well, I deal in almost every class except cabinet woods.
24 Q. How is lumber and how has it been, during your experience, described or designated in the business, the different sorts of lumber, different classes of lumber, how have they been described or designated in the business?
A. The two great classes are rough and dressed.
Q. What is understood by rough lumber in the business?
A. Sawn lumber, as it comes from the saw.
Q. What is understood in the business and has been since your experience, as dressed lumber, in the business?
A. That is lumber that has been worked into any form on or by a planing machine; the working might also be done by hand, but as a matter of fact there is very little of that kind of work done now.
Q. I show you this paper, the protest in this case, and ask you, Mr. Dudley, if that is your signature at the bottom?
A. It is.
Q. What is it?
A. It is a protest addressed to the collector of customs for the district of Vermont.
Q. Against the assessment of duty on certain lumber, is that it?
A. That is it.
Q. Is the lumber correctly described in this protest that was the subject of those importations?
A. It is.
Q. Have you present any samples of those importations, those identical importations?
A. I have not.
Q. For what reason?
A. Because they were beyond my reach at the time the protest was made.
Q. Have you present any samples which bear such resemblance to those importations that they are fair, merchantable, representative samples of those importations?
A. Yes, sir.
Q. Will you exhibit those samples?
A. There is one that covers it.
Mr. TUCKER. I offer that in evidence.
Mr. GIBSON. I object to the acceptance of any samples in evidence except samples of this particular importation.

25 Q. Is lumber ever sold by sample, Mr. Dudley?
A. Possibly.
Q. Is it ordinarily or generally sold by sample?
A. I don't think so.
Mr. GIBSON. We will offer to accept on the part of the Government to stipulate that the lumber in controversy is spruce, planed on one side, and tongued and grooved.
The CHAIRMAN. Mr. Tucker, is Mr. Dudley or any one of his employees—you must have had somebody who put this lumber on the cars—able to describe it from personal knowledge?
Mr. TUCKER. I presume that his man at the mill in Canada would know something about his lumber; what it was.
The CHAIRMAN. We admit this sample as illustrative, and not as a sample of the actual merchandise.
(Same marked in evidence "Exhibit 1, 27625–B, July 24th, 1895.")

By Mr. TUCKER:

Q. Mr. Dudley, I will ask you whether or not you have any knowledge of exactly what these importations consist of, to such an extent as to define it distinctly, each carload?
A. I have not; no sir.
Q. Whether or not you have any knowledge in a general way of the condition of that lumber in those various cars?
A. No, sir.
Q. From what source or what knowledge do you present that sample as a representative sample of the cargo?
A. Because the description of the lumber in the entries and in the protest there calls for lumber of that character, that is, of that style of dressing.
Q. Have you any knowledge of the dimensions of this lumber?
A. No; I have not.

26 By General Appraiser WILKINSON:

Q. Or the purposes for which it is to be used?
A. No, sir; not a direct knowledge.

By the CHAIRMAN:

Q. You received an order for this lumber before you shipped it?
A. Without doubt; yes, sir.
Q. Are you able to state what the order contained?
A. No; I am not.
Q. That would give the dimensions and conditions, wouldn't it?
A. Yes; I suppose it would.

By Mr. TUCKER:

Q. There are, I think, some seven or eight cars here described in this protest?
A. Yes, sir.
Q. Were those cars all for one party or for more than one party?
A. I do not know.
Q. Whether they went to one place or half a dozen places, whatever it may be?

A. My recollection is that Mr. Dane stated at the time——

Mr. GIBSON. I object to this, and I move that this testimony that has been given so far as to the description of this lumber be stricken out, because the witness says he has no knowledge, he didn't see it; it is only knowledge that he has gained in a general way; he didn't see the order given; it is only what has been told him. This is an important question, and we stand upon the line here to know which side is dressed and on which side is manufactured lumber. It is a very important thing to have the thing very clearly connected.

The CHAIRMAN. The board will not sustain that motion, Mr. Gibson. If Mr. Dudley does not prove something on which the board can act and establish his side of the case, his protest cannot be sustained; it is incumbent upon him to show what his merchandise was, definitely.

27 Mr. TUCKER. This protest is the foundation of the question here. Mr. Dudley has testified that that protest correctly describes that lumber in a general way. It is the subject of description. He has presented here as a sample, a representative sample, not of the particular importation, but, as he believes, a representative sample of the condition of the lumber which is the subject of the protest. Now, then, it seems to me that the question, the subject-matter for the decision of this board, is presented in this way: That here are certain provisions of law and here are certain importations which are described not only in the protest, but, by the testimony of Mr. Dudley and by a sample, described to such an extent as to be perfectly apparent what the importations were, so far as affecting this question of what constitutes dressed lumber and what constitutes rough lumber.

The CHAIRMAN. You may proceed, Mr. Tucker.

By Mr. TUCKER:

Q. Now, Mr. Dudley, you have testified that you have been in the lumber business some thirty years; that you have been in the lumber business in Portland some fourteen years; that you have dealt in all sorts and descriptions of lumber except what you call furniture lumber, and that you considered dressed lumber to be all of such lumber which has been worked upon by a planing machine. Now, I will ask you whether or not—as you understand the expression dressed lumber or the term dressed lumber in the trade, both now and for years—whether or not there is any narrower or different limitation to the question of what is dressed lumber than that which you have given?

A. There is none; there is not.

Mr. GIBSON. I move that that question and answer be stricken
28 out, for the reason that the question here is not what is dressed lumber now, but what was dressed lumber when the act went into effect.

The CHAIRMAN. His evidence purports to cover all that time. You may cross-examine him, Mr. Gibson.

(Motion denied. Exception.)

Mr. TUCKER:

Q. I will ask you one more question, Mr. Dudley—whether or not all the lumber covered in the importations and cars described in this protest

were—as you understand the scope and meaning of the term dressed lumber, both now, the year 1894, and for twenty years before—were known as dressed lumber in the trade?

A. Yes, sir.

By Mr. GIBSON:

Q. Was this lumber all exported from one port or point?

A. All from Canada; yes, sir.

By the CHAIRMAN:

Q. He asked you all from one point.

A. I think not.

Q. Was it all imported about the same time?

A. It was.

By Mr. GIBSON:

Q. For whom was it ordered?

A. Ordered *from* myself for my own mills.

Q. Have you a copy of the letter with you, ordering?

A. I have not.

Q. Was it ordered by letter or orally?

A. Probably by letter.

Q. Would the letter show the dimensions of the order—of the lumber covered by the order?

A. I presume it would.

Q. Would the order show the length and thickness and width?

A. Probably; yes, sir.

Q. Can you state, from your recollection, what the length and width and thickness of this importation was?

A. I cannot; no sir.

29 Q. Have you any personal knowledge of the thickness of this lumber?

A. No, sir.

By General Appraiser WILKINSON:

Q. Do you own those saw mills, Mr. Dudley?

A. Yes, sir; I own one and part of another.

By Mr. GIBSON:

Q. Have you any other knowledge as to what its thickness was, or its width or its length?

A. I have not.

JOHN HUBBARD HOWRY, called as a witness, and being first sworn, testifies as follows:

By Mr. TUCKER:

Q. Your full name, please.

A. John Hubbard Howry.

Q. Your place of residence and place of business and business?

A. My place of residence is Saginaw, Michigan; my business, lumber business.

Q. How long have you been engaged in that business?

A. Since 1881; our firm since 1867.
Q. What class of lumber do you deal in?
A. Well, in rough and dressed lumber.
Q. Do you have anything to do with a mill?
A. Yes, sir.
Q. What we call a lumber mill?
A. Yes, sir.
Q. What do you do at that mill?
A. We manufacture the logs into rough lumber.
Q. What else do you do with it?
A. And then we have a mill for dressing lumber.
Q. As you understand the expression rough lumber in the business, in the trade, what does it include or did it include last year?
A. It was the lumber as it comes from the log.
Q. As you understand the expression lumber dressed or dressed lumber in the trade, what did it include last year or this year or the year before?
A. It is lumber that has been worked either by hand or by a planing machine to some given form.
30 Q. Will you look at this Exhibit 1 and state what sort of lumber this is?
A. That is dressed lumber.
Q. Do you know the term in the trade, finished lumber, f-i-n-i-s-h-e-d?
A. No, sir; I do not.
Q. Have you any idea or understanding of the word finished as applied to lumber?
A. No, sir.
Q. How is this lumber bought and sold; that is, your rough lumber and your dressed lumber that you have described?
A. By board measure; so much per thousand feet.
Q. That is, a thousand feet, board measure, in the rough?
A. Yes, sir.
Q. Does that include all dressed lumber? Is that the way it is bought and sold?
A. Yes, sir.
Q. What you have described as dressed lumber?
A. Yes, sir.
Q. Can you tell me about the extent of your business per annum?
A. About fifty million feet per annum.
Q. How wide is your business extended? How far does it go?
A. Do you mean——
Q. I mean in the country. What do you do? Where do you sell your lumber or buy it, or both?
A. It is sold through Ohio, Pennsylvania, in the New England States; Michigan.
Q. Whether or not lumber in the condition like that sample, Exhibit 1, would, as you understand it in your trade, be considered a manufacture of wood in contradistinction from dressed lumber?
A. I think not.
(Objected to by counsel for Government and motion made to strike out. Motion granted. Exception.)

By Mr. GIBSON:

Q. Where is your business now?

A. In Saginaw, Michigan; that is our head office; and at Fendelon Falls, Ontario.

Q. Are you an importer of lumber from Canada into the United States?

A. We are importers of lumber both in Canada and in the United States.

31 Q. When did you begin in Canada?

A. I think seven years ago; six or seven years.

Q. Do you export any lumber from Canada and import it into the United States?

A. Yes, sir.

Q. How much per annum?

A. I think at present about twenty-five millions; twenty to twenty-five millions.

Q. A year?

A. Yes, sir.

Q. Have you seen any of this lumber covered by this protest?

A. No, sir.

Q. You don't know the size of it?

A. No, sir.

By the CHAIRMAN:

Q. Calling your attention to Exhibit 1 in this case, will you state whether or not lumber in that form has a specific name in trade?

A. Whether there is a name for lumber in that particular form?

Q. Yes, sir.

A. That looks like a piece of flooring to me.

Q. Flooring?

A. Yes, sir.

Q. Known as flooring, is it, in trade?

A. I would say so.

By General Appraiser SHARRETTS:

Q. Is the term dressed synonymous with planed? If you received an order for lumber dressed on one side, would you understand planed on one side?

A. Yes, sir.

Q. If you were to receive an order for lumber dressed on two sides, would you understand planed on two sides?

A. Yes, sir.

Q. If you received an order for dressed on both sides, would you send it? If they simply sent you an order for lumber dressed on both sides, would you understand what was meant?

A. Yes, sir.

Q. You would fulfill that order by sending lumber that was tongued and grooved as well as dressed?

A. I would not.

Q. Is the tonguing and grooving done in the planing machine?

A. Yes, sir.

Q. Is it a subsequent process?

32 A. All at once. You can surface or plane two sides or four sides, or you can surface or plane one side or you can surface two sides and tongue and groove all at once.

By the CHAIRMAN:

Q. Is that comparatively new—machines for all operations at once?

A. I don't think so.

By Mr. TUCKER:

Q. You have answered the general appraiser that this was lumber which would be known as flooring. I would like to ask you if it is ever bought and sold as flooring in the business, in the trade; when you are talking about it or make a bill of it do you describe it as flooring?

A. If a man was to order flooring it would be known as flooring.

Q. I am asking you if it is ever ordered in that way or billed in that way; bought and sold in that way?

A. Yes, sir; it is.

Q. Described as flooring?

A. Yes, sir.

Q. Isn't it described by dimensions in an order; if you have an order don't you have dimensions?

A. Yes, sir.

Q. Well, is it called floorings of certain dimensions?

A. No, sir; not in all instances. The gentleman asked me——

Q. In a general way, is it?

A. No; it would not be called flooring in a general way; assuredly not.

Q. Then calling it a flooring is exceptional, is it not?

A. Yes, sir; I understood him to ask me what that resembled; I said flooring.

By the CHAIRMAN:

Q. I asked you if it had a specific name in the trade and you said it had, flooring.

A. Yes, sir.

By Mr. TUCKER:

Q. I ask you whether it is bought and sold in the trade as flooring or whether it is bought and sold as lumber?

A. I would say it is bought and sold as lumber.

Q. And sometimes called flooring?

A. Yes, sir.

33 By General Appraiser WILKINSON:

Q. Would you ever bill goods like that as lumber?

A. As lumber?

Q. Yes, sir.

A. Yes, sir; we have filled orders for it as lumber. For instance, we would get an order for strip 1 by 4 or 1 by 5, surface, one or two sides, tongued and grooved; it would not be known as anything but strips.

Q. You would bill the order as strips?

A. Yes, sir.

Q. I ask you if you would ever bill those goods as lumber?

A. Yes, sir; because we make 1 by 10 the same as that, and that would be known as lumber.

Q. I am not asking you how it is known. I am asking you if you ever read the words on a bill in words like that, so many feet of lumber, so many dollars?

A. Yes, sir; we have, a great many times.

By Mr. GIBSON:

Q. Was there any other process necessary to be done to this lumber in this form before it was used as flooring?

A. The carpenter has to square-end it and fit it to the place where it goes.

Q. That is all that is necessary, isn't it, to cut it down to the size?

A. Yes, sir.

Q. And it would be put in without any further process?

A. Yes, sir.

By Mr. TUCKER:

Q. Whether or not in your business you have a telegraphic code?

A. Yes. sir.

Q. Have you one with you?

A. I have not. I think I have one in my satchel, but I haven't one in my pocket.

Q. You haven't one in your pocket?

A. No; not in my pocket.

Q. Can you testify as to what words in that telegraphic code there are as to dressed lumber?

The CHAIRMAN. The code would be the best evidence.

34 Q. Does the term dressed lumber include what you say here is sometimes called flooring?

A. Why, most assuredly.

Q. Has it always included it in your business experience?

A. Always, since I have been in business.

By Mr. GIBSON:

Q. Did you ever fill an order for dressed lumber, so many thousand feet of dressed lumber, the dimensions of the board saying board ten inches wide—would you fill such an order as that with lumber planed on one or both sides and tongued and grooved?

A. I don't know as I exactly understand your question?

Q. (Repeated.) Did you ever fill an order for dressed lumber, so many thousand feet of dressed lumber, the dimensions of the board saying board ten inches wide—would you fill such an order as that with lumber planed on one or both sides and tongued and grooved?

A. No, sir.

Q. How long have planing mills been in use?

A. Well, since before I can remember.

Q. How long have you had your planing mill there?

A. About a year.

MADISON W. RIPLEY, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. Your full name, please?
A. Madison W. Ripley.
Q. Where is your residence and place of business?
A. Portland, Maine.
Q. What is the business?
A. Lumber dealer.
Q. How long have you been in that business?
A. Thirty years.
Q. At Portland all the time?
A. Yes, sir.
Q. What sorts of lumber have you dealt in?
A. All that are native to the United States.
Q. Have you a mill where you make lumber, or saw lumber, or dress lumber?
A. No, sir.
35 Q. You are dealers in lumber, are you, purely?
A. Yes, sir.
Q. Is lumber in the business divided into classes, or do you have it in different classes?
A. Yes, sir.
Q. Will you please tell us what those are?
A. It will take some time. Uppers, select, shelving, dressing, flooring, sheathing, casing, baseboards; a good many other kinds; there are many other kinds; I would have to refer to a price list, perhaps, to name them all.
Q. Have these terms or names which you have given, have they been applied and are they supplied to lumber of both what is known as rough lumber and what is known as dressed lumber?
A. Yes, sir.
Q. What do you consider rough lumber in the business?
A. Lumber as it comes from the sawmill.
Q. What do you consider as included in the term dressed lumber or lumber dressed?
A. All lumber that has been through a process of dressing by a planing machine.
Q. Is there, as you understand it in the trade, any narrower limit to the matter of dressed lumber than that which you have described?
A. Yes, sir; dressed lumber is divided into different shapes and qualities.
Q. Describe those.
A. Casing, base, sheathing, flooring, and many different qualities of those.
Q. You use the term qualities; do those descriptive names or words which you have referred to apply to quality; do they represent quality?
A. Yes, sir; the descriptive words that I named when I say sheathing and flooring describes the method of dressing.
Q. Does it describe quality also?
A. No, sir; not necessarily.

Q. Is dressed lumber—all these different sorts of lumber which you describe, are they bought and sold as lumber?

A. Yes, sir.

36 Q. Are they ever bought and sold as flooring or sheathing to go into the dressed lumber class—are they ever bought as flooring or sheathing or casing?

A. Yes, sir.

Q. Which is the rule—I mean the general practice?

A. They would come under the general head of lumber; all would come under the general head of lumber; but if a dealer wanted any particular method of dressing he would call it sheathing, flooring, casing, or base in giving his order.

Q. To specify what he wanted done to it, would he?

A. Yes, sir.

Q. Is it bought and sold by the thousand feet in rough measure?

A. Yes, sir.

Q. So that whether you are selling or buying rough lumber or dressed lumber it is all sold by the thousand feet of the rough measure?

A. Yes, sir.

By Mr. GIBSON:

Q. Are you interested in any manufactory of lumber in Canada?

A. No, sir.

Q. Your business is confined to the United States?

A. Yes, sir.

Q. Do you receive any lumber imported into the United States from Canada?

A. Occasionally, but very little.

Q. About how much?

A. Well, it is hard to say; several hundred thousand a year, perhaps; a small quantity.

Q. How much lumber do you sell in the course of a year?

A. Perhaps seven to ten millions.

Q. At what points do you sell it?

A. All through New England.

Q. Can you name the places?

A. Boston, Salem; nearly all the towns on the lines of the railroads.

By the CHAIRMAN:

Q. Portland also?

A. Yes, sir.

By Mr. GIBSON:

Q. If you received an order for a thousand feet of dressed lum-

37 ber, say boards, and any thickness, ten inches wide, sixteen feet long, would you not send them lumber of those dimensions, dressed on one or both sides?

A. No, sir; I should write to my customer, asking him how he would have it dressed?

Q. But suppose, he says, "I want you to fill the order as I sent it," what would you send?

A. I would not send anything on such an order as that without further instructions?

Q. Did you ever receive such an order?
A. Very likely.
Q. Is this sample which has been introduced—is not lumber like that, if it was cut a proper length and squared at the ends—would it not in that condition be laid down at once as flooring without any further manufacture?
A. This sample, Exhibit 1?
Q. Yes, sir.
A. Yes, sir.
Q. That would be known as flooring, would it not?
A. Yes, sir.
Q. If a man should give you an order that he wanted lumber dressed on both sides and tongued and grooved, would you then ask him whether he wanted it for flooring or whether he wanted it for sheathing?
A. Yes, sir.
Q. You would not fill that order, would you, without further specification?
A. No, sir.
Q. Then, after lumber has been planed on one or both sides, if there is any further process done to it, it takes upon it some name, does it not, such as sheathing or base or flooring?
A. Yes, sir.
Q. It is then designed for some especial purpose or use, is it not?
A. Yes, sir.

By Mr. TUCKER:

Q. You said that such lumber would be called flooring and designed for a special purpose; I would like to ask you if it is adapted for other uses, in your judgment?
A. Yes, sir.

38 HERBERT K. BLANCHARD, called as a witness and being duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Herbert K. Blanchard.
Q. Your place of business?
A. Boston.
Q. Kind of business?
A. Lumber business.
Q. How many years?
A. About eighteen.
Q. What sorts of lumber have you dealt in?
A. All kinds; spruce and pitch pine.
Q. Have you any interest in any mills?
A. No, sir.
Q. You are buyers and sellers of lumber, is that it?
A. Yes, sir.
Q. What, in 1894, as you understand it, or understood it, in the business, was included in the term dressed lumber?
A. Well, any lumber that is put through a planing machine, I should say, dressed or matched or planed two sides or jointed in any way required.

Q. Is all dressed lumber, as well as rough lumber, as you understand it, bought and sold by the thousand feet, all rough measure?

A. Yes, sir.

Q. That is, if you are selling dressed lumber here, you sell as a thousand feet what was required of rough lumber to make a thousand feet, and whatever it may measure in the rough condition you take no notice of?

A. Yes, sir.

Q. What is your firm?

A. William Haskins & Son.

Q. What is the extent of your business?

A. Oh, I don't know; I think about thirty-five million feet.

Q. Will you look at that sample there, Exhibit 1, and state what sort of lumber that is, as you understand it in the trade?

A. Well, I should call that dressed lumber; it might be used for flooring or it might be used for different purposes; it would depend on the quality of it.

Q. As you understand in the trade, does the tongueing or grooving make it any less dressed lumber than if it were simply planed on one side?

A. I should say not.

Q. Does it make any more dressed lumber than if it was planed on one side?

A. No, sir; I should not say so.

Q. Supposing it was not planed at all and was tongued and grooved; what would it be then?

A. Well, I don't know; it would be dressed lumber, I suppose, in a slight degree.

Q. Why?

A. Because it is run through a planer.

Q. Is lumber like that bought and sold as lumber?

A. Yes, sir.

Q. What is the ordinary way of describing in a bill or an invoice, of describing lumber; I mean as applied to what you have testified to as dressed lumber?

A. Well, it would be called—it depends on what they want it for; it is a pretty broad term, so that you might call it dressed lumber or you might call it flooring or sheathing or whatever the case might be.

Q. Are there in the bill any denominations given, any figures to cover the dimensions?

A. Well, sometimes.

By the CHAIRMAN:

Q. Is spruce flooring, as it is designated in trade, ordinarily made in uniform widths or thickness?

A. Why, I should say it was.

Q. So that if a man orders spruce flooring he may know that he is going to get a board two inches and a half to three inches wide and three-fourths to seven-eighths inches thick, tongued and grooved?

A. I should say he would. It would be ranged; some would want one, some another, some would want a variety.

Q. If you ordered rough boards without giving any widths, they would vary in widths?

A. Yes, sir.
A. But the spruce flooring would come in uniform widths?
A. They would come in uniform widths, yes, sir; that is, generally speaking.

40 By Mr. GIBSON:

Q. Do you represent any Canadian mill?
A. We represent one Canadian mill, yes, sir.
Q. Give its name.
A. The Cookshire mill.
Q. Where is it located?
A. In Canada.
Q. At what point?
A. Cookshire.
Q. Does your firm, in company, represent any other Canadian interest?
A. No, sir; I don't think we do.
Q. Do you import lumber from Canada?
A. We import some; not very much.
Q. About how many feet during the past year?
A. Well, I should think—— Well, when you say we imported, of course, the people I represent imported?
Q. Yes, sir.
A. We import probably in the neighborhood of twenty million.
Q. If you should receive an order for a thousand feet of spruce boards, say ten inches wide and an inch thick, and sixteen feet long and dressed, would you fill that order by tonguing and grooving them?
A. No; I should say not.
Q. How would you fill such an order?
A. Dressed; I should want to find how they wanted it dressed; that would be the first thing I should do.
Q. Well, is spruce lumber that is cut in the sizes of the exhibit here, that is in the width and tongued and grooved as that is, used generally for any other purposes than flooring?
A. Yes, sir; I should say it was.
Q. Did you ever know it to be used for any other purpose?
A. Yes, sir; I have seen it used for partitions or sheathing up sides of buildings, but usually for flooring.
Q. Are not partitions used planed on both sides?
A. Yes, sir.
Q. That would not be used for partitions then?
A. That would not be.
Q. Finished as that is?

41 A. It is generally used for a flooring, but it could be used for partitions, and I have sold it for that purpose.
Q. You don't mean to say it could be in that form?
A. I should say so; it could be.
Q. But probably would not be?
A. No, probably would not be; we used it for flooring generally.
Q. Goods similar to that you would say would be used as flooring?
A. Yes, sir.
Q. And would be known to the trade as flooring in that form?
A. Yes; I should say it would.

Q. Isn't it a fact that when lumber of that kind goes beyond any other process of being dressed on both sides, that it is classified or designated by some name such as flooring or sheathing or siding or shelving?

A. I should say it would; yes, sir.

Q. And when lumber is dressed in that form, such as is designated for shelving and siding and base and for flooring, isn't it in such a good condition that it is ready to be used, except for cutting it in the required lengths?

A. Yes, sir.

Q. And fitting it together?

A. I should say it would, except of course it would have to be cut off more or less.

Q. Yes, to fit the proper length?

A. Yes, sir.

By Mr. SHARRETTS:

Q. Are you familiar with the trade names? Do you sell the goods to your trade yourself?

A. I beg your pardon.

Q. Do you sell your goods to the trade?

A. Yes, sir.

Q. Are you familiar with the trade names?

A. Yes, sir.

Q. Is the term dressed lumber a trade term?

A. Yes, sir.

Q. Do you understand by that term dressed lumber, a lumber that is planed on one side or two sides?

A. It could be dressed different ways and termed dressed.

42 Q. But if you would receive an order that was tongued and grooved would you expect them to send you an order for lumber that was dressed and tongued and grooved, would you expect the order for dressed lumber to include the whole thing, if they didn't want flooring and wanted it for some other purpose that was tongued and grooved, would they have to expressly say tongued and grooved or not—is that the practice in the trade?

A. It would be called dressed lumber, but they would state which way they wanted it dressed.

By the CHAIRMAN:

Q. Wouldn't they add the words tongued and grooved to dressed?

A. No; I should not say they would; they would simply say——

Q. Simply say dressed?

A. Dressed one or two sides, planed and matched, whichever it might be.

Q. When they use the words planed and matched they don't use the word dressed, do they?

A. Well, they sometimes do.

By General Appraiser SHARRETTS:

Q. Would the term dressed lumber include lumber that was tongued and grooved, or would they have to add tongued and grooved as understood in the trade?

A. Naturally they would say planed one side and tongued and grooved or planed or jointed.

Q. They would either say dressed and planed on one side or tongued and grooved and jointed, as the case might be?

A. Well, I don't know as I would do that; people have different ways of sending orders, you know; they vary more or less.

Q. You have already stated that the term is a trade term?

A. Yes, sir; generally when they send an order for dressed, they say planed one side and matched or jointed and grooved, as the case may be.

By the CHAIRMAN:

Q. In that case they don't say anything about dressed in the order, do they?

A. No, sir; I should say not.

43 Q. You assume that they send an order for dressed lumber when they specify all these things, and don't say anything about dressed lumber?

A. Dressed lumber covers all that, as I understand it.

W. S. MARSH, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. W. S. Marsh.

Q. Where is your place of residence and place of business?

A. Springfield, Mass.

Q. What is the business?

A. Retail lumber business.

Q. How long have you been engaged in the lumber business?

A. A little over thirty years.

Q. Have you bought and sold the various sorts and kinds of lumber?

A. Yes, sir.

Q. Both rough lumber and what is generally known as dressed lumber?

A. Yes, sir.

Q. What do you understand and what have you understood in your experience as included within the term dressed lumber?

A. Lumber that has been put through a planing machine.

Q. Well, all lumber that has been put through a planing machine, whatever may have been done to it in the planing machine, is that dressed lumber?

A. I should say so; yes, sir.

Q. Will you look at that sample, Mr. Marsh, Exhibit 1, and state what sort of lumber you would call that, as known in the trade?

A. I would call it spruce floorings.

Q. Is it dressed lumber?

A. Yes, sir.

Q. Would it be considered in the trade, as you understand it, as within the category or description of dressed lumber?

A. I should say so; yes, sir.

Q. How do you sell lumber?

A. By the thousand feet.

Q. Do you sell this sort of lumber the same as you do rough lumber?

A. Yes, sir.

44 Q. You speak of that as being flooring. Do you know whether it is adapted for other purposes than for the making of a floor—whether it is used for other purposes?

A. I think it may sometimes be used for other purposes; I know it is.

By Mr. GIBSON:

Q. Do you remember a time when the planing machine and the machine for tonguing and grooving were separate machines?

A. I think I do; yes, sir.

Q. You remember a time, don't you, when wood was run through the planing machine and then was put through a tonguing and grooving machine separately, don't you?

A. Yes, sir; I do.

Q. Well, understanding the things you do now, I understand your definition in describing the dress lumber was, you say, that is all lumber that has been through a planing machine. That was your definition, was it?

A. That is what I said; yes, sir; but I of course understood it as we do things now.

Q. One moment, Mr. Marsh. Suppose that sample of lumber there was not tongued, and suppose it was not grooved; suppose it was simply planed on one side; would it sell for any more per thousand feet after being tongued and grooved than it would sell for if it were simply planed on one side.

A. You mean sell for more?

Q. Yes, sir.

A. Well, I think, ordinarily it would sell for a little more.

Q. A higher price would be asked for it after it had been tongued and grooved than it would be asked if it was only planed on one side?

A. You don't mean anything done to the edges?

Q. No; I mean simply rough—planed upon one side.

A. I should say, generally; yes, sir.

Q. Then the tonguing and grooving of lumber after it had been planed on one or both sides added something to the expense?

A. Yes; but it is not tongued and grooved after it is planed now.

45 Q. Have you ever received an order for dressed lumber of a certain width or length?

A. Yes, sir.

Q. Well, how would you fill that order?

A. I should try and get at what the man wanted and then fill it.

Q. You would ask him whether he wanted it tongued or grooved?

A. Yes, sir; whether he wanted it planed on one or both sides, beaded, or whatever he wanted done with it.

Q. Have you ever sold any lumber that was dressed on both sides and not tongued and grooved?

A. Yes, sir.

Q. What did you call that?

A. I called it lumber planed two sides.

Q. Didn't you call that dressed lumber?

A. Yes, sir.

Q. Then there would have to be—if a man ordered from you dressed lumber he would have to add some other description?

A. Yes, sir.

Q. Such as tongued and grooved?

A. Yes, sir; before I should fill the order he would.

Q. Or beaded?

A. Yes, sir.

Q. And that would denote the purpose for which it was intended to be used, would it not?

A. Yes, sir.

Q. And if he ordered dressed lumber from you, you would ask him to add a further qualification of whether he wanted it tongued and grooved?

A. Yes, sir; I should ask him how he wanted it dressed.

CHARLES M. ROBINSON, called as a witness, and, being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Charles M. Robinson.

Q. Where is your place of business and what is your business?

A. My business is lumber business and the headquarters of the parties are at Portland.

Q. How long have you been in the lumber business?

A. Twenty-four years.

46 Q. As a buyer and seller of lumber?

A. As a seller of lumber more than a buyer. I have bought small amounts of it; not very much.

Q. What sorts of lumber have you dealt in?

A. Most everything, pine principally; pine and spruce.

Q. Do you know of any such thing in the trade, or have you in your experience, as dressed lumber?

A. Yes, sir; I have handled a great deal of it.

Q. What sort of lumber was understood as dressed lumber, or was, in 1894?

A. I should consider that most any lumber that went through a dressing machine or a planing machine was dressed lumber.

Q. Are you familiar with planing machines and the work they perform?

A. Yes, sir.

Q. Tell us what sort of work they do, and did in 1894.

A. They dressed lumber in every form, planed two sides, planed two sides matched and beaded, planed and grooved—well, it is dressed in every shape that you find lumber.

Q. All done in this planing machine?

A. All done in the planing machine at one process.

Q. At one process?

A. Yes, sir.

By the CHAIRMAN:

Q. Does that include molding?

A. They generally do it on a separate machine.

By Mr. TUCKER:

Q. Do they handle moldings on planing machines?

A. They usually have a little different machine, although you can do planing and matching on a molding machine.

Q. Can you do molding on a planing or matching machine?

A. Not all of them, no; at least I don't understand it so.

Q. Look at that sample there, Exhibit 1, and state what, as you understand it in the trade, what sort of lumber that was in 1894.

A. The manner it is dressed?

47 Q. I ask you what sort of lumber you consider it, whether as rough lumber or dressed, or both, or something else?

A. It is dressed lumber; lumber that is dressed one side, planed, and matched; dressed lumber.

Q. Do you know how that lumber is bought and sold? How do you sell it? Do you sell that sort of lumber?

A. Yes, sir.

Q. How do you sell it—in what way?

A. You mean by the superficial foot, or how?

Q. Yes, sir.

A. That is the way it is sold; I never sold it any other way.

Q. The feet as it measures as it is, or measured in the rough?

A. So many thousand feet.

Q. In the rough?

A. Yes, sir; the figures are put on in the rough, and they follow it through the machine.

Q. I understand you; for instance, you have got a board like that in the rough, measured, we will say, twelve feet, and that is marked on the board, 12 feet?

A. Yes, sir.

Q. Do you understand that twelve feet is carried right through?

A. That twelve feet on the other side is usually marked on the planed board.

Q. On the planed board?

A. On the planed board as it comes through.

Q. So that the original measurement adheres to it until it comes out in this other thing?

A. As I understand it, yes, sir.

Q. How is that sort of lumber ordinarily bought and sold? How do you talk about it when you are making the trade?

A. I don't know just what you are trying to get at. If a man wants that class of lumber, he will tell you what he wants.

Q. How would he tell you?

A. He would tell you that he wanted this four inches wide, planed one side, and matched.

Q. That is, he describes what he wants?

A. He describes the manner in which he wants it dressed.

Q. Supposing he wanted it planed one side?

A. He would say planed one side.

Q. Supposing he wanted it planed two sides?

A. He would say planed two sides.

48 Q. Supposing he wanted it jointed?

A. He would say jointed.

Q. That is, the planing on the edges is equivalent to jointing, is it?

A. Yes, sir.

Q. In other words, when a man wants any lumber, when any dressing or planing is applied to it, he states specifically what he wants this mill to do—this planing machine?

A. He describes in what shapes he wants the lumber.

By the CHAIRMAN:

Q. We frequently see rough sticks put into a lathe and turned out balusters, or possibly stair rails, &c.?

A. Yes, sir.

Q. Would you understand that in trade and commerce in the month of August, 1894, that would be known simply as dressed lumber?

A. No; I don't know anything about that; I never had anything to do with turned lumber; it would come under the head of dressed lumber, I suppose.

Q. The lumber is dressed by knives substantially in the same manner as it is done in these new machines?

A. Well, turning is an altogether different process; they don't do turning on a planing machine.

Q. They don't do turning and grooving on a planer?

A. Most of the planers do the matchers, not all of them; what they call surfacers don't do any tonguing or grooving. As for turning posts and banisters, &c., I don't know anything about that.

By Mr. GIBSON:

Q. Would not that piece of board there—that sample—would not boards of that kind be known in the trade generally as flooring?

A. As flooring?

Q. Yes, sir.

A. It might be used for that; yes, sir.

By the CHAIRMAN:

Q. That is not answering his question; he asked you if it would be known in trade as flooring.

49 A. Flooring is worked in that way, and flooring, too, is planed and jointed.

By Mr. GIBSON:

Q. Supposing you give an order for a thousand feet of spruce flooring—what is the width of that?

A. I think it is four inch.

Q. The thickness?

A. $\frac{7}{8}$, I should judge; I guess it is worked $\frac{7}{8}$.

Q. Suppose you got an order for a thousand feet of spruce flooring 4 inches wide and $\frac{7}{8}$ of an inch thick.

A. Yes, sir.

Q. Would you supply lumber of that kind?

A. Well, it is different in different markets.

Q. No, no; just answer that question; in your market, I mean.

A. I should ask the man how he wanted it dressed—planed and matched or jointed.

Q. Suppose he wanted it tongued and grooved?
A. I should supply this.
Q. Lumber identically the same or similar to that?
A. Yes, sir.
Q. Are you familiar with the sawing of lumber?
A. I know very little; something of it; very little; my experience of sawing has been more in the last three months.
Q. Have you a mill?
A. Mr. Dudley has a mill; I am in his employ.
Q. You say you are in Mr. Dudley's employ?
A. Yes, sir; I am at the present time.
Q. Is part of your business to have charge of the mill?
A. I do something of that kind; I am a kind of all-around man.
Q. Are you familiar with the working of the planing mill?
A. Yes, sir.
Q. Do you receive orders for lumber?
A. Yes, sir.
Q. And do you give the directions how the lumber shall be prepared from those orders?
A. If the customers give me the directions, I make similar directions.
Q. Are you in the habit of receiving orders?
A. Yes, sir.
50 Q. Suppose you received an order for a thousand feet of board ten inches wide to be dressed on both sides.
A. Yes, sir.
Q. You would have them planed on both sides, would you not?
A. Yes, sir.
Q. Suppose the order went further and said the boards are to be dressed on both edges, would you not have them planed on the two edges?
A. If they were ordered so; yes, sir.
Q. Then they would be dressed on the four sides of the board, wouldn't they?
A. Yes, sir; that is a very common way of dressing.
Q. That you would call dressed lumber, would you?
A. Yes, sir; always been known so, as far as I know.
Q If it was only planed on one side what would you call it?
A. I should call it surfaced one side, or dressed one side.
Q. Which would you call it?
A. The more common use in the locality I have been in was dressed, one side.
Q. Suppose it was planed on both sides?
A. Then it would be known as dressed on two sides.

CHARLES A. MEIGS, called as a witness, and being first duly sworn, testified as follows:

By Mr. TUCKER:

Q. Your name?
A. Charles A. Meigs.
Q. Where do you live and where is your business and what is your business?

A. My business is lumber business, in New York, and I live in Orange, New Jersey.

Q. You say you are in the lumber business in New York?

A. Yes.

Q. How long have you been in the lumber business?

A. More than twenty years.

Q. What sorts of lumber do you deal in?

A. We are local traders and deal in everything.

Q. Do you buy and sell rough lumber?

A. Yes, sir.

51 Q. Do you buy and sell dressed lumber?

A. Yes, sir.

Q. What would you consider, in 1894, as in the term of dressed lumber?

A. Any lumber that was dressed and retained its original form, practically.

Q. What do you mean by retained its original form?

A. Was not cut up.

Q. That is, made into special or particular shapes?

A. Yes, sir.

Q. Do you know anything about a planing mill or lumber mill?

A. No, sir; I have never had anything to do with a planing mill.

Q. Look at that sample, Exhibit 1, there, and state what, in your opinion and from your experience in the trade, what sort of lumber that was in 1894?

A. I could not say about that; that is flooring now.

Q. What sort of lumber?

A. You mean that style? That is flooring.

Q. Is it rough lumber or dressed lumber, or is it neither?

A. It is dressed lumber.

Q. When you say it is flooring, what do you mean by that?

A. That tonguing and grooving carries that distinction.

Q. What do you mean?

A. In this market, in this part of the country.

Q. Makes it a flooring?

A. Yes, sir.

Q. Is it adapted for any other purposes or purpose?

A. Any purpose in which you want to make a tight joint.

Q. Might be used for partitions, or anything of that sort?

A. Yes; packing cases, too.

Q. Then it has this term of flooring; why does it have that?

A. It is most used for that purpose.

Q. It is generally so?

A. Yes, sir.

Q. Are you wholesale dealers in lumber?

A. No, sir; retail.

Q. You sell to the carpenters and the builders, &c.?

A. Yes, sir.

Q. Do you ever have such a thing as an order for lumber, styled
52 dressed lumber, alone, saying, "I want so many thousand feet of dressed lumber?"

A. Yes, sir.

Q. Without any specification?

A. Without any specification at all, presuming that we know, practically, the quality that was wanted. There is no such thing as dressed lumber, by itself; it varies in quality. The point is this: We may have been trading with a man who has been using dressed lumber of a quality that we knew; if he should order lumber we would give him the same as he had before.

Q. You would assume that he wanted the same thing?

A. Yes, sir.

Q. Supposing that he had been ordering planed on one side only, would that be dressed lumber?

A. I would not fill that order; not if I had been delivering him two sides.

Q. Suppose he had been using one?

A. I would go right ahead with it.

Q. Supposing he said, "I don't want that; I want two," what would you say as to that?

A. I would put that as his own fault, not having expressed himself properly.

Q. Supposing he wanted it planed on two sides, tongued and grooved, and he had been having it planed on one side?

A. We would furnish him what he had been having.

Q. And if he wanted anything different he would have to specify it?

A. Yes, sir.

Q. To come back to the original transaction. If he ordered ten thousand feet of dressed lumber, what would you sell him?

A. I would ask him what he wanted, dressed on one side, or what.

Q. You would not attempt to fill such an order?

A. No, sir.

By Mr. GIBSON:

Q. Suppose you had been delivering him lumber dressed on both sides, and he should give you an order for a thousand feet of dressed
53 lumber, wouldn't you send him lumber dressed on both sides?

A. Yes, sir; I should follow practically what had been his course, unless he specified to the contrary.

Q. Supposing you had been delivering him lumber dressed one side, planed on one side, and he sent you an order for dressed lumber; would you send him lumber dressed on one side?

A. The same thing; we are doing that same thing every day.

Q. Then, as I understand you, it is usual, or you do sometimes receive orders for dressed lumber without any specification?

A. Yes, sir.

Q. Have you ever filled such an order without any further specification from a man with whom you had not before been dealing?

A. Oh, yes; that question would come up. Of course, if a man wanted dressed lumber, what do you want it for?

Q. Suppose you got an order for a thousand feet of pine boards, say an inch or an inch and a quarter thick and ten inches wide, 14 or 16 feet long, dressed, say uppers; would you fill that order without going any further?

A. Yes, sir.

Q. What would you send?

A. I would send dressed two sides.

ARTHUR C. DUTTON, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Arthur C. Dutton.

Q. Where is your residence, place of business, and what is your business?

A. Springfield, Massachusetts, residence and place of business, and my business is wholesale and retail lumber.

Q. How long have you been engaged in the lumber business?

A. About thirteen years; fourteen years.

Q. Are you buyers and sellers of lumber?

A. Yes, sir.

54 Q. Do you have anything to do with any mill which planes lumber; I mean are you interested in any mill?

A. No, sir.

Q. Simply buyers and sellers of lumber?

A. Yes, sir.

Q. What sorts of lumber do you buy and sell?

A. All kinds of lumber; all ordinary kinds of lumber used in ordinary buildings.

Q. Do you have a class of lumber which comes under the head or known under the head of dressed lumber?

A. Yes, sir.

Q. Do you have a class known as rough lumber?

A. Yes, sir.

Q. What did you last year understand was included in the lumber business as dressed lumber?

A. Any kind of dressed lumber that could be put through a planing machine at one operation.

Q. That is, whether it is planed on one side or planed on two sides, or planed on one side and matched, or planed on two sides and tongued and grooved?

A. Yes, sir.

Q. You understand that all these different operations are carried through at one process on the planing mill?

A. Yes, sir.

Q. Look at that sample and state what sort of lumber that is or was in 1894, as you understand it in the trade?

A. It is dressed lumber.

Q. How was it bought and sold? How did you buy and sell it?

A. Per thousand feet.

Q. Thousand of what sort of feet?

A. Board measure.

Q. Rough measure?

A. Here it is measured in the rough, yes, sir; that is, this strip is probably $3\frac{1}{4}$, $3\frac{1}{2}$ inches wide and measured as 4 inches; $\frac{7}{8}$ thick and measured as one inch.

Q. So far as you buy and sell it is as if it were 4 inches?
A. Yes, sir.
Q. What is the extent of your business per annum?
A. In dollars and cents?
Q. No; quantity.
A. Why, that is rather a hard thing to answer; off hand I should say 25 to 30 millions feet per year.
55 Q. Do you have western lumber?
A. Yes, sir.
Q. Have Canadian lumber?
A. Yes, sir.
Q. Do you have southern lumber?
A. Yes, sir.
Q. Do you deal in hard lumber; that is cabinet woods or anything of that sort?
A. Well, nothing but quartered oak; we don't handle mahogany or rosewood or any of those things.
Q. Do you have hard pine?
A. We handle some.
Q. That comes from North Carolina, doesn't it?
A. North Carolina, Alabama, and Georgia.
Q. What is the condition of it as you have it here?
A. In what way do you mean?
Q. Is it rough or dressed?
A. It is used in both ways.
Q. I mean when you have it here for sale, what is its condition?
A. We don't handle any rough lumber in that at all; all ours is dressed lumber.
Q. How is that sold—the same way?
A. Yes, sir.

By Mr. GIBSON:

Q. How many thousand feet of lumber do you import from Canada, say during the past year?
A. I don't think we had over possibly a million and a half, two millions.
Q. At what points do you sell your lumber?
A. All our lumber or our Canadian lumber?
Q. All your lumber?
A. Our trade is in all of the New England States and New York State, New Jersey—northern New Jersey.
Q. I understand you, you don't have any mills?
A. No, sir.
Q. You just buy lumber?
A. Buy and sell.
Q. Your attention has been called to that exhibit there, number 1. Would not that be classified in the trade generally as flooring?
A. Yes, sir; it would be called flooring or——
Q. Is that the end of your answer? I only want a responsive answer, that is all. I repeat the question and I want a responsive answer. Your attention has been called to that exhibit there, number 1.
56 Would not that be classified in the trade generally as flooring?

A. It might be called—let us see, that is——
Q. Answer that question first?
A. This might be used as something else.

By the CHAIRMAN:

Q. He is not asking you about that; he asked you if it was known in the trade as flooring?
A. Flooring or narrow sheathing, depending on the quality of it as to which it would be called.

By Mr. GIBSON:

Q. Would it be used for any other than those two purposes that you have named?
A. Oh, yes; it might be used for a variety of purposes; it might be used for box boards.
Q. It might be used for firewood, too, might it not?
A. Sure. It would not be the natural use to put lumber of that kind.
Q. It would not naturally be used for box boards, would it?
A. I have a customer that uses nothing else but this stuff for box boards, uses a carload a month for it.
Q. Would not the tonguing and groving be larger than that if it were used for box boards?
A. I don't think so; I have sold it to this gentleman for some time.
Q. Would not the tonguing and grooving be deeper for box boards?
A. I don't think so.
Q. But you know?
A. I don't know. I have always ordered the stuff from the mills planed and matched.
Q. Do you put in any order as to the purposes for which it is to be used?
A. No, sir; the mill does not know what it is to be used for.
Q. Is not the tonguing and grooving done differently for sheathing and siding than what it is for flooring?
A. Why, that——
Q. Answer yes or not.
A. Not always; no, sir; sometimes, yes.
Q. Isn't it generally so?
A. I could not say as to that.
57 Q. How old are you?
A. Thirty-one.

CHARLES A. MEIGS, recalled:

The stenographer, by direction of the board, read the last question and answer of this witness, as follows:

Q. Suppose you got an order for a thousand feet of pine boards, say an inch or an inch and a quarter thick and ten inches wide, 14 or 16 feet long, dressed, say uppers, would you fill that order without going any further?
A. Yes, sir.
Q. What would you send?
A. I would send dressed two sides.

By Mr. DUDLEY:

Q. Why would you send that lumber dressed two sides?
A. That is the usual way of dressing that lumber.
Q. That grade of lumber?
A. That grade.
Q. If it had been a coarse grade of lumber from an unfamiliar customer, what would you have done?
A. He would have to specify his wants.
Q. How he wanted it dressed?
A. Yes, sir.

Mr. SPRATT:

Q. How many different grades of lumber do you consider to be above what you have termed here coarse lumber in your last answer?
A. Well, I should say, taking our own stock, we have four or five.
Q. How many in the trade generally?
A. Well, that depends upon the market to which it is going and the wants of that particular district.
Q. How many, according to your knowledge of the trade, the New York market, for instance?
A. It is very hard to define that.
Q. You don't know how many different grades, do you?
A. No, sir; it depends entirely upon the wants of the individual.

At this point (1.05 p. m.) a recess was taken until 1.35 p. m.

58 AFTER RECESS.

ADELBERT B. TWITCHELL, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your name?
A. Adelbert B. Twitchell.
Q. Where is your place of business?
A. Newark, New Jersey; lumber business.
Q. What sort of lumber?
A. All kinds of lumber, except fancy woods; all ordinary building lumber.
Q. Are you buyers and sellers of lumber?
A. Yes, sir.
Q. Have you any interest in any mill which dresses the lumber—planes lumber?
A. Indirectly, in the city where I reside.
Q. Have you any interest in any foreign mill?
A. No, sir.
Q. How long have you been in the business?
A. Something like twenty years.
Q. You buy and sell all sorts of lumber, with the exception of what you say?
A. Yes, sir; all sorts of lumber for ordinary building purposes.
Q. Do you buy and sell rough lumber?
A. Yes, sir.

Q. Do you buy and sell dressed lumber?

A. Yes, sir.

Q. What was, in 1894, understood in the trade, as you understand it, as dressed lumber—what did it include in 1894?

A. All lumber that was milled for any purpose.

Q. What do you mean by milled?

A. I mean dressed one side or two sides, or tongued and grooved or beaded, or anything of the kind.

Q. About what is the extent of your business, in fact?

A. I suppose four or five millions.

Q. Do you sell at retail?

A. Yes, sir.

Q. Do you sell at wholesale?

A. Well, we do to a certain extent sell other dealers; we call that wholesale.

59 Q. In selling at retail do you sell to the users of lumber—that is, carpenters or builders?

A. Mostly.

Q. Then are you familiar with terms which are used by carpenters and builders in buying lumber?

A. Generally; I think so; yes, sir.

Q. Will you look at that sample, Mr. Twitchell, and say what sort of lumber it is as you understand it in the trade, or was in 1894?

A. It is a piece of dressed spruce lumber.

Q. Supposing that piece of lumber was only planed on one side, what would it be then?

A. The same thing—dressed lumber.

Q. Supposing it was planed on two sides and not tongued and grooved, what would it be then?

A. Dressed lumber.

Q. If it is tongued and grooved, what is it?

A. Dressed lumber.

Q. How is it sold—in what way?

A. Generally sold by the foot.

Q. Sold by the foot, the measurement made of the lumber as it is or made in the rough?

A. We sell it as it would figure up in the rough.

Q. At so much per thousand feet?

A. Yes, sir.

Q. Is that the way that you sell rough lumber?

A. Yes, sir.

Q. Now, do you sell rough lumber for boarding of barns or boarding of buildings?

A. Well, we ordinarily do not, because it is usually dressed in some way or other; in some form or other.

Q. Do you ever sell it without any dressing at all?

A. Well, that might—sometimes we might, for a rough building outside—a cow house or a pig pen, or something of that kind.

Q. Then would they use the lumber exactly as you sold it to them in the rough state?

A. Probably.

Q. I ask you whether or not in your experience and from your knowledge of dealing with the users—the carpenters and the builders—is there any distinction, so far as the use is concerned, of using a piece of lumber like that or using it in the rough?

60 A. I don't know as I understand the question, sir.

Q. For instance, I have asked you about boarding a barn, a shed, or anything like that; you say sometimes they use rough lumber just as they buy it of you. Now you say they use that lumber as they buy it of you, so far as the use is concerned. Is there any distinction between one and the other affecting the classification of it or how you know it in the trade?

A. Suppose if any one ordered ten inch boards, it would be rough lumber, and this we would call dressed lumber.

Q. But one is fitted for use and the other is fitted for use, is it not?

A. For whatever use they attempt to put it to; yes, sir.

By Mr. GIBSON:

Q. Mr. Twitchell, would you characterize that sample of lumber there by any particular name?

A. I call it a piece of dressed spruce.

Q. In regard to the use for which that would be used, would you designate it by any particular name for that purpose?

A. I should say it was a piece of flooring.

Q. Generally you would designate that as flooring, would you not?

A. Yes, sir.

Q. In its form it would be then adapted for a specific or special purpose, would it not?

A. Yes, sir.

Q. Well, now, is not the term dressing usually understood to apply when applied to lumber—it means that the lumber, the surface of it, is evened up so that it will be made out on equal thickness and can be adapted for any ordinary or special purpose for which that class of lumber would be adapted. Is that not so?

A. Well, if one orders——

Q. Well, one moment. Is not the term dressing generaliy understood to apply when applied to lumber—it means that the lumber, the surface of it, is evened up so that it will be made out on equal thickness and can be adapted for any ordinary or special purpose for which that class

61 of lumber would be adapted. Is that not so?

A. I can not answer such a question as that very well; it is too broad—too many things in it.

Q. Very well; now, does not the dressing of lumber, that is the evening it up or planing it on one or both sides, enable the shipper of the lumber to ship a greater quantity of it, and it enables it to pack closer and saves weight and space, does it not?

A. Yes, sir.

Q. Now, will you please state whether the act of tonguing and grooving such lumber as you have there, Exhibit 1, will add anything to the expense or cost of the lumber beyond planing it on one or both sides.

A. Ordinarily it would add a trifle in the expense; not very much.

Q. Are you familiar with the planing of lumber?

A. Well, ordinarily familiar; yes, sir.

Q. Have you a mill?

A. I don't own one; I have an indirect interest in one; so that I know something about the mill.

Q. Do you know the kind of machines that are used for planing and tonguing and grooving?

A. They usually call them matchers; I don't know the technical terms of machinery in the mills.

Q. There are more than one kind of machines, are there not?

A. There are matching machines, surfacing machines, and molding machines.

Q. Do you know that a different machine is used for making flooring and for making moldings?

A. No; not different machines, different knives.

Q. Well, you don't know that there are?

A. Yes, sir; I think I know that.

Q. Do you know that there is not a different and separate machine used for preparing boards for flooring than what there is for molding?

A. Yes, sir; usually there are different machines; they call one a molding and the other a flooring machine, and at the same time a piece of flooring can be worked on a molding machine.

62 Q. Is there not a machine known distinctively for making floorings?

A. Not distinctively; no, sir.

Q. You have stated, as I understand, in your examination that you call lumber planed on one side dressed.

A. Yes, sir.

Q. You call it planed on two sides dressed?

A. Yes, sir.

Q. You call it when tongued and grooved dressed?

A. Yes, sir.

Q. You would term it when it is made into forms of a base board, you would call that dressed lumber [producing sample]?

A. Yes, sir.

(Same marked in evidence "Exhibit 2, 27625–B, July 24th, 1895.")

Q. Well, where would you draw the line between manufactured lumber and dressed lumber?

A. I should call dressed lumber anything that would go through a machine and dress in any form in one machine or one process, and manufactured lumber would be, perhaps, lumber that is made into shooks or cut for trim, to a special length, so that it would be adapted without any further work upon it to put right into place.

Q. That is what you would call dressed lumber?

A. No; manufactured lumber, that could be used to be put in place without any further work upon it.

Q. Take Exhibit 2, cut a certain length, say 12 feet long, could not that be put right in place without any work on it?

A. I don't know; lumber is 12, 14, and 16 feet long. If a carpenter should give an order to cut that in six foot seven, I should say that was manufactured lumber.

Q. Take that Exhibit 1. Suppose an order were given to cut that a certain length and 4 inches wide and $\frac{7}{8}$ of an inch thick and tongued and grooved, would you call that manufactured lumber?

A. I should not know how to answer that question; I have never had such an order; I never heard of such an order, so I don't know as I should know how to answer it.

63 Q. Haven't you had orders for flooring of a certain length and width and thickness?

A. We have had orders for flooring, say 12 feet long or 16 feet long, but we never cut it that; we simply send it as it comes manufactured from the mill, 12 or 14 feet long as it comes; we never had orders to cut it to a specified length.

Q. Supposing you had orders to cut it to a specified length; would you then consider it manufactured lumber?

A. I never heard of such an order in my experience.

CHARLES L. ADAMS, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Charles L. Adams.

Q. And your residence and place of business?

A. Residence in Mount Vernon, New York; place of business, 138th street and the Harlem River to 139th street and Harlem River, New York.

Q. What is your business?

A. Lumber.

Q. What is your firm name?

A. Wilson, Adams & Co.

Q. How long have you been in that business?

A. Thirty years.

Q. What is the extent of your business in quantity?

A. A pretty large business, a pretty good sized business; varies from six to seven hundred thousand to a million dollars a year.

A. I don't mean the value; I mean the quantity.

A. Well, that expresses it; probably thirty million feet.

Q. What sorts of lumber do you deal in?

A. All sorts of domestic lumber, more or less.

Q. Are you buyers and sellers?

A. We are.

Q. Have you any interest, any direct interest, in any mill?

A. No, sir.

Q. You are buyers and sellers of lumber?

A. Yes, sir.

64 Q. Wholesale or retail?

A. We call ourselves retailers; we sell some pretty good orders sometimes.

Q. You sell to the consumer, the carpenter and the builder?

A. Well, mostly.

Q. What sorts of lumber?

A. All domestic lumber.

Q. Any foreign lumber?

A. Well, not much; only occasionally.

Q. Have you any interest in any planing mill?
A. We run one in connection with our business.
Q. Where?
A. 149th street, in the city of New York, in connection with our business.
Q. Do you buy and sell rough lumber?
A. Yes, sir.
Q. Do you buy and sell dressed lumber?
A. Well, we dress our own lumber mostly; we have bought dressed lumber on occasion, too, yes; we buy some dressed lumber.
Q. What do you or did you last year in your trade and business understand by the term dressed lumber? What does it include, what sorts of lumber or what conditions of lumber?
A. Any kind of lumber that we bought dressed.
Q. You say you had a mill?
A. We don't always run a mill, and we sometimes buy some of the lower grades of lumber now that are dressed when we buy them—buy them dressed.
Q. Describe what the dressing is.
A. Usually planed one side and tongued and grooved.
Q. That is what you call dressed lumber?
A. Yes, sir.
Q. That is what you buy and sell as dressed lumber?
A. Yes, sir; dressed lumber. We would usually specify it as roofing or flooring, but it is dressed lumber, dressed flooring, dressed ceiling.
Q. Can you tell us about why you specify it in that way?
A. Because it is used for different purposes.
Q. Well, do you mean specially adapted for some purposes?
A. Well, that is usually its grade more than anything else.
65 Q. You mean quality?
A. It is the quality or grade more than anything else.
Q. That is, from its quality it is especially adapted for certain purposes?
A. That is, largely.
Q. Now, in your rough-lumber trade, do you have different classes of that; I mean to say, is it divided off into classes, like finished or anything like that?
A. A great many classes.
Q. What do those classes indicate?
A. The quality, largely; thickness.
Q. They indicate an adaptation for some particular use?
A. That is it.
Q. Does that mean that they are excluded for other uses?
A. Not at all.
Q. Look at that sample there; Exhibit 1; what sort of lumber is that, or would you understand it in your business last year as?
A. Well, a piece like that I would call a pretty good piece of spruce flooring.
Q. Well, whether or not it is dressed lumber or was dressed lumber?
A. Dressed lumber; it would be technically known as dressed flooring.

Q. Dressed flooring, why?

A. Well, it is a quality of flooring, and it is ready for the floor; it is dressed flooring; it is dressed in contradistinction to being rough flooring. If it was in the rough in that quality, it would be rough flooring.

Q. Do you have such a thing as that?

A. I buy it from others.

Q. And sell it as rough flooring?

A. Yes, sir; if anyone wants it in the rough.

Q. And considered the same way as that?

A. Yes, sir.

By General Appraiser WILKINSON:

Q. Is it tongued and grooved?

A. Not rough; it is not tongued and grooved when it is rough. If we bought dressed flooring, it is that Exhibit 1; if we bought rough flooring, it is finished in no way, neither tongued, grooved, nor anything else.

66 By Mr. TUCKER:

Q. But do you sell it as flooring?

A. Certainly, if anybody wants to dress it themselves. If anyone wants rough flooring, we will sell rough flooring.

Q. How do you sell it?

A. By the thousand feet, usually.

Q. What measure?

A. Rough measure, sometimes; this spruce—sometimes that which is cut to standard lengths is sold by the piece in spruce—sometimes by the piece, sometimes by the thousand.

Q. What do you mean by standard length?

A. Well, 1 by 9 and 13 is standards; inch and a quarter by 9 is standard.

Q. What you call standard is that supposed to be for some special purpose?

A. No. It has been the custom of the leading markets for years to make certain standard sizes; others are mixed up in odd lots—job lots.

By General Appraiser SHARRETTS:

Q. Does that apply to rough flooring as well as to dressed flooring?

A. Certainly; rough boards; that is what it is largely in the rough; more of that lumber come in the rough than dressed.

By Mr. TUCKER:

Q. Do you have written orders for lumber?

A. Why, certainly.

Q. Do you ever have an order for flooring where it is specified—written out for flooring?

A. Oh, yes, sir.

Q. How do they order it; what words do they use?

A. They would order so much flooring.

Q. Anything else?

A. Quality.

Q. Anything as to dimensions?

A. Not usually; sometimes, yes.

Q. Width?
A. Yes; most always width.
Q. Now, when it is to be dressed or prepared, do they specify what they want done to it; whether it is to be planed one side or
67 planed two sides or planed, tongued, and grooved?
A. Sometimes; if they don't, we understand the flooring is dressed one side, tongued and grooved, like that piece. They may have a certain way of dressing it, a square match, or this, that, or the other.
Q. You have spoken about flooring here. Is there such a thing as shelving?
A. Yes, sir.
Q. And base?
A. Yes, sir.
Q. And all that sort of thing?
A. Yes, sir.
Q. Now, are those descriptive terms for different kinds of dressed lumber?
A. Yes, sir.
Q. And all are included under a term dressed lumber, as you understand it in the trade?
A. Shelving would be; I don't know whether base would be; we don't claim to sell manufactured lumber or lumber for a house for fitting up or trimming.
Q. What is the condition of base, what you call base?
A. Usually it is molded on one edge.
Q. Something like Exhibit 2?
A. I am not an expert in the house-trimming business, but I should say that was a piece of base.
Q. How long does that sort of lumber ordinarily come? What is the ordinary merchantable length?
A. Of white pine, it would depend on the quality; if it was white pine, it would be 12 to 16 feet ordinarily. If it was spruce, it would be 13 feet ordinarily; if it was yellow pine, it might be any length.
Q. Supposing it was any of those three—that piece like Exhibit 2—say any of those three kinds of lumber, and if those lengths, would that be, as you understand it, dressed lumber?
A. This here, Exhibit 2?
Q. Yes, sir.
A. It certainly would be dressed lumber.
Q. Do you know anything about a mill?
A. We run one, sir.
Q. Would that effect be produced on a planing machine?
A. Yes, sir; on a molding machine, generally.
68 Q. On a molding machine?
A. Well, the difference is, I guess, more in the quality of the machine than anything else and in the way they run them; run slower, expected to do fancy work, than an ordinary planer.
Q. Is the molding machine an attachment which can be affixed to the planing machine in a moment?
A. Yes, sir; as I understand it, it is a finer, small machine.

Q. A separate affair?

A. Yes, sir. They need not be a separate affair. That can be run on an ordinary planing machine. It is a question of the knives, as I understand it. I am not an expert on machinery, but that is my understanding of the matter.

By Mr. GIBSON:

Q. Would you consider that Exhibit 2 manufactured wood?

A. Yes, sir; it is manufactured the same as flooring is manufactured, the same as anything that is——

Q. One moment, please; answer my question.

A. Well, I hardly—it is manufactured to a certain point.

Q. You would consider that Exhibit 2 manufactured wood?

A. Well, as I say, to a certain point, yes; it is not absolutely finished until it is cut into lengths.

Q. Well, if that piece of wood was cut into a certain specified length and manufactured as it is there, would you consider it then a manufactured wood?

A. Yes, sir.

By the CHAIRMAN:

Q. Would you consider it as advanced beyond the condition of lumber known commercially as dressed lumber?

A. I think I should; I am not—understand, I am not a dealer in this sort of goods.

By General Appraiser WILKINSON:

Q. You use the term finished. What do you mean by that?

A. Well, I don't know as we use the term.

69 By Mr. GIBSON:

Q. Did you ever make anything like that?

A. I think we do make some occasionally to order; I think we occasionally make some in yellow pine or North Carolina pine to order probably; not exactly like that.

Q. But similar?

A. Similar, something to that effect; we make that to order; we don't cut it to lengths or finish it up any further.

Q. Then you do know something about it, then?

A. Well, to that extent; sometimes to order.

RUFUS RESSEGUIE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Rufus Resseguie.

Q. May I ask you where you live and where your place of business is?

A. I live 235 Clermont avenue, Brooklyn; my business is on the corner of Flushing and Washington avenues, Brooklyn.

Q. What is your business?

A. Lumber yard.

Q. How many years?

A. Over forty-nine years.

Q. Have you any objection to telling your age at the present time, sir?

A. No, sir; I have not. I have passed eighty-four years.

Q. Are you a buyer and seller of lumber?

A. Yes, sir; I have been for a good many years.

Q. Do you have anything to do with a mill?

A. Yes, sir.

Q. Where?

A. In Grand avenue, near Fulton, I have a mill.

Q. This is in Long Island?

A. No; Brooklyn.

Q. What do you do at the mill?

A. We dress lumber.

Q. You buy and sell rough lumber?

A. Yes, sir.

Q. And buy and sell dressed lumber?

A. Yes, sir.

70 Q. What last year did you consider or was considered in the trade, as far as your experience went, as dressed lumber? What was the condition of it—the term dressed lumber?

A. Well, sir, it is lumber that is faced on one side is called dressed lumber; lumber dressed two sides is called dressed lumber, and lumber that is dressed on four sides is nothing else but dressed lumber, more or less dressed lumber.

Q. Supposing it is tongued and grooved?

A. It is dressed lumber.

Q. Is that what you consider the understanding of the trade last year as applied to dressed lumber?

A. Yes, sir; for forty years.

Q. Look at that sample, Exhibit 1.

A. Yes, sir; that is tongued and grooved; that is a piece of pine or white wood.

Q. It is spruce, sir.

A. It may be; I cannot see very plain, sir.

Q. You can tell by feeling?

A. Yes, sir; it is light.

Q. How would you describe that, as dressed or rough—or whether each of them applies to it?

A. That is dressed lumber.

Q. Do you know how that is sold?

A. Yes, sir; it is sold by the thousand feet and is sold by the piece, both.

Q. Do you have any rough lumber that you sell by the piece?

A. Yes, sir.

Q. What sort?

A. Well, we call it an inch by 6⅞; inch by 10; inch by 12; inch and a quarter by 10; inch and a quarter by 12; it is different thicknesses, different lengths; we sell that by the piece and also by the thousand.

Q. Which is more general, to sell by the thousand or the piece?

A. We buy more lumber by the piece; the Albany market is piece lumber, is what they call tally board, an Albany board; lumbermen knows

what an Albany board is. An inch thick, ten inches wide, thirteen feet long, is always called a standard for an Albany board, and has been for a great many years.

71 Q. Is that peculiar to the Albany board?

A. No; I only speak of that as being the same; other lumber in the same way; spruce board, spruce plank, strips, and all that kind of thing is generally bought and sold by the piece.

Q. Can you tell me about the quantity of your business per annum, the number of feet?

A. Yes; probably we sell a million and a half a year; that is very low; that is very small to what we used to sell; we are selling nothing like the quantity we used to sell.

Q. Do you sell to the users largely—to the carpenters and builders?

A. Yes, sir; we sell to the carpenters and builders and to the trade.

Q. Is the term dressed lumber used to any extent in ordering lumber or buying lumber? Supposing you get an order from a builder or a carpenter, does he use the term dressed in describing it—I mean a written order?

A. Yes, sir; he wants it dressed. We get an order over the telephone, "Send us one hundred ceiling boards," we know that means a dressed board, and we say, "Do you want it dressed one side or two sides?" It is so with plank, t is so with cutting up lumber; we want to know whether they want it dressed one side or two sides, &c.

Q. How about the tonguing and grooving?

A. That comes with dressed lumber.

Q. Supposing they wanted it tongued and grooved, you would want them to describe it?

A. A ceiling board is tongued and grooved. It is not a ceiling board if it is not.

Q. If they give you an order for rough lumber, then what?

A. Well, we want one hundred rough pine boards, or we want 500 rough pine boards, or 500 feet of box rough.

Q. When they describe it that way you understand that the box means a certain quality?

A. Yes, sir; low grades.

Q. Does it have any reference to the condition of the lumber?

72 A. No; whether it is seasoned or half seasoned or dried, nothing beyond about that, we cannot say that it would have, sir.

Q. Take that small sample, Exhibit 2. Can you see that enough to see what it is?

A. Yes, sir.

Q. Do you ever produce such a thing as that in your mill?

A. Well, we do, sir; that is probably cut for a piece of base, probably the end of a seven-inch base; this is a six or seven inch base.

Q. What sort of a machine do you produce that effect on—on the upper edge there?

A. That is run with a regular molding tool, and we used to put a base board, and then dress a strip, a molding strip, to put on top. I think they are finishing it in this way more or less. That is a piece of finishing lumber.

Q. Is that dressed lumber, supposing it to be in the ordinary conditions and lengths, &c., or what is it?

A. Well, it is dressed lumber; that is what it is.

Q. Do you know how it is bought and sold, whether by the piece or thousand feet?

A. It is generally by the hundred running feet; this is—either of these is bought and sold by the running feet or the piece.

By General Appraiser WILKINSON:

Q. Exhibit by board measure?

A. Yes, sir; by board measure.

By Mr. GIBSON:

Q. I notice that you, in speaking about the lumber—you say that if you get an order to dress it on one or both sides?

A. Yes, sir.

Q. Or to dress it on the edge?

A. Yes, sir.

Q. Now, the term dressed, then, is not applied when they want it tongued and grooved? When they want it tongued and grooved they say, "We want it dressed on one or both sides and want it tongued and grooved," do they not?

A. Well, if they want it tongued and grooved they say they
73 want it so, and sometimes they will lay a floor without tonguing and grooving, and they dress it with square edge, which is all the same to us.

Q. Did you ever get an order for dressed lumber?

A. Oh, yes; we get orders for dressed lumber.

Q. Well, if you received an order for that kind, what would you supply?

A. Well, I would supply the kind that they ordered to have it dressed. They might order a load of shelving; shelving means dressed lumber.

Q. If you were ordered to furnish dressed lumber, would you furnish lumber dressed on both sides?

A. I would furnish it as they ordered it; if they ordered it one side——

Q. But if they ordered it simply dressed, say they should order boards, fine lumber boards, an inch thick, ten inches wide, and thirteen feet long, dressed, how would you deliver those boards to them?

A. We would deliver it to them dressed one side, and one edge or two edges, or with just facing, unless it was specified to the contrary, if they wanted them dressed both sides.

Q. You would not tongue and groove them unless they specified that?

A. No, sir; we would face it and send it to them just faced one side; dressed lumber.

Q. Suppose you would get an order to supply one hundred feet of that kind of molding, one hundred pieces, we will say, of molding like that Exhibit 2, cut in pieces of twelve feet, would you consider that manufactured lumber or not, after it was brought to that condition, I mean?

A. No, sir; I should not; I would not, sir; at this time. We might consider that twenty-three years ago. We are doing these things now; they are dressing lumber now; but I would not; it is simply dressed lumber.

Q. What, then, would you consider manufactured wood or lumber?

A. I should consider manufactured lumber sash and blinds, which comes mortised, or with a tenant to put together, and I would
74 consider sash and blinds and door that comes mortised to glue together, to glue up to put together, I would consider that manufactured lumber.

Q. Well, look at this piece of lumber which I hand you.

A. That is only dressed lumber.

Q. That is only dressed lumber?

A. I consider it so; you place your knives here [indicating]; that is only dressed lumber.

(Same marked in evidence "Exhibit 3, 27625–B, July 24th, 1895.")

Q. Now, look at that piece of lumber, please.

A. That is dressed lumber, dressed nice, but that is a nice piece of pine; that is all right. That is dressed lumber, nothing else.

(Same marked in evidence "Exhibit 4, 27625–B, July 24th, 1895.")

Q. What is this which I hand you?

A. This is dressed lumber.

(Same marked in evidence "Exhibit 5, 27625–B, July 24th, 1895.")

Q. What is this which I hand you?

A. That is the same thing.

(Same marked in evidence "Exhibit 6, 27625–B, July 24th, 1895.")

Q. What is this which I hand you?

A. Well, that is a little piece of dressed lumber; it is a parting strip, a kind of a window strip; it is just dressed lumber; we pick them up by the load, there, just in that shape.

(Same marked in evidence "Exhibit 7, 27625–B, July 24th, 1895." Exhibits 3, 4, 5, 6, and 7 are now put together by Mr. Edward L. Strong, of counsel for the American manufacturers.)

Q. Is not that object there composed of those boards, Exhibits 3, 4, 5, 6, and 7, a section of a window casing?

75 A. Well, it has that appearance, sir; yes; that lumber is cut and grooved and matched; it fits together.

Q. So those pieces of lumber which have been shown you, Exhibits 3, 4, 5, 6, and 7, when put together, form what is called a section of window casing?

A. No. It looks more as if it was put up with a column. I am not a carpenter. It is just what a carpenter would call a section of a window frame for a weight and a pulley to run through there to raise the window, yes, sir.

By Mr. TUCKER:

Q. You have been asked about an order for dressed lumber and what you would send in reply to it?

A. Yes, sir.

Q. Did you ever have, or is it customary to have, an order for dressed lumber without the order specifying how it should be dressed?

A. Yes, sir, we have; we have trouble with just such orders.

Q. What did you do when you have such an order?

A. We send it back; it goes back again and we send it back again.

Q. Is it your custom when you receive such an order to ask the party back again, "Well, how do you want it dressed," or something equivalent to that?

A. We most always have to do that, because people ordering lumber they are careless, and they are forgetful, and they don't order it as they want it; make mistakes.

Q. That is, sometimes they want it tongued and grooved, and sometimes they want it planed on one side, and sometimes on two, and sometimes matched?

A. That is the idea, exactly.

Q. Supposing in such a case they sent an order for dressed lumber, then you inquired of them how they wanted it dressed?

A. Yes, sir; unless they tell us how to dress it in the order.

Q. Is that piece of wood, Exhibit 3—do you ever have wood or lumber in that condition for sale?

A. No; we don't keep it in stock at all, sir; we send it to the mill and have it dressed; they have to specify, particularly, and have it dressed so.

76 Q. How about the length of it or the width of it?

A. Well, it does not make any particular difference about its being called dressed lumber, about the width or length of it; it is the same thing, wide or long or short or narrow; it is the same thing, it is dressed lumber all the same, whether it is more or less.

Q. Then it is, even though it is put together and becomes what you call a column or part of a window frame?

A. When it is put together——

Q. But before that it is dressed lumber, isn't it?

A. I consider it so.

A. P. COOKE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. A. P. Cooke?

Q. Where is your place of business?

A. It is now in New York.

Q. New York City?

A. Yes, sir.

Q. What is your business?

A. Lumber business, wholesale.

Q. Are you by yourself or of a firm?

A. By myself.

Q. How long have you been in the business?

A. About thirty-eight years.

Q. What sorts of lumber do you deal in?

A. All kinds.

Q. Buyer and seller of lumber?

A. Of late years I have been in the commission business, formerly in the planing mill business and commission business—rough and dressed lumber.

Q. All sorts and kinds of lumber.

A. Yes, sir.

Q. You have dealt in rough lumber?

A. Yes, sir.

Q. And have you dealt in dressed lumber?

A. Yes, sir.

Q. What do you understand and what did you understand, last year or before, was understood in the trade as being included under the

77 term of dressed lumber or lumber dressed?

A. Well, lumber that had been through a planing mill—that is, dressed either one side or two sides or four sides.

Q. Suppose it is tongued and grooved?

A. All the same.

Q. I show you Exhibit 1 there and ask you what that would be known as in the trade last year?

A. Dressed lumber.

Q. You say you had at one time a mill?

A. Yes, sir.

Q. Where you did this sort of work?

A. Yes, sir.

Q. How is that lumber sold, lumber of that sort?

A. Usually by the thousand feet, unless it is of certain sizes and certain lengths and then they are sold by the feet in some parts. We usually sell it by the thousand feet.

Q. Have you any idea or is there any understanding in the trade as to when any of this stuff ceases to be lumber and becomes something else?

A. Well, I have my idea; I don't know that it is held by the trade.

Q. Well, you say you have been thirty-eight years in the business and your ideas must be influenced somewhat by your business?

A. Yes, sir.

Q. I would like to have your ideas.

A. I have generally considered lumber that is cut to sizes and lengths and all finished off for the carpenters to use directly without any cutting or sawing.

Q. Without any fitting?

A. Without any fitting. All fitted is manufactured.

Q. And all below that?

A. All below that is dressed lumber.

By the CHAIRMAN:

Q. I will ask you whether or not the Exhibit 1 here is advanced beyond the condition of lumber which would be known as dressed lumber simply?

A. I don't think it is, however you work it in a planing machine.

78 By Mr. GIBSON:

Q. Please look at Exhibit 1.

A. Yes, sir.

Q. Is not lumber prepared as that adapted for some particular purpose?

A. Yes, sir; a good many purposes.

Q. Is not that piece of lumber there, Exhibit 1, known generally as flooring?

A. Either flooring or sheathing or ceiling. This especial piece would not be used for sheathing, because it is too good a quality.

Q. Wouldn't it ordinarily be used for flooring?
A. Ordinarily for flooring or ceiling.
Q. And it would be known in the trade as flooring or ceiling?
A. Well, it is a name applied to it; yes.
Q. Is that the class to which it would belong?
A. Well, it depends on what the person wants to use it for.
Q. If he wanted to use it for that purpose or the other, it would belong to that class?
A. He would call for a certain width, dressed, tongued, and grooved.
Q. Answer my question. According to your best judgment, what would lumber of that quality be used for ordinarily?
A. Ordinarily it would be used for flooring or ceiling of that quality.
Q. And it would be known in the trade as flooring, would it not?
A. I don't think necessarily that term would apply to it.
Q. Is not ceiling usually beaded?
A. Yes, sir; beaded on the under side; sometimes flooring is on the under side.
Q. Is not ceiling, generally speaking, beaded?
A. Usually; yes, sir.

SAMUEL A. SKEAD, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Samuel A. Skead.
79 Q. Where is your business, and what is it?
A. I am in the white pine export lumber business; Produce Exchange Annex is my office.
Q. How long have you been in that business?
A. I have been in the export lumber business for fifteen years.
Q. Is your trade confined to white pine?
A. White pine and pitch pine.
Q. Do you have it in the rough?
A. We have it in every shape.
Q. You have it rough and have it dressed?
A. Yes, sir.
Q. What would you consider was in the term dressed lumber last year?
A. Anything that went through a planing mill.
Q. You say you are in the exporting business?
A. Yes, sir.
Q. Where do you send lumber?
A. We sell it to the commission merchants here for shipping to the West Indies and South America.
Q. Do you sell domestic lumber?
A. We have been selling both Canada and Michigan lumber.
Q. How is it sold?
A. By the thousand feet.
Q. That is whether it is rough or dressed?
A. Whether it is rough or dressed.
Q. Look at Exhibit 1 and state what, as you understand in the trade, that would be classed under, whether rough or dressed lumber or either of them, or what?

A. Yes, sir.

Q. And have you dealt in dressed lumber?

A. Yes, sir.

Q. What do you understand and what did you understand, last year or before, was understood in the trade as being included under the

77 term of dressed lumber or lumber dressed?

A. Well, lumber that had been through a planing mill—that is, dressed either one side or two sides or four sides.

Q. Suppose it is tongued and grooved?

A. All the same.

Q. I show you Exhibit 1 there and ask you what that would be known as in the trade last year?

A. Dressed lumber.

Q. You say you had at one time a mill?

A. Yes, sir.

Q. Where you did this sort of work?

A. Yes, sir.

Q. How is that lumber sold, lumber of that sort?

A. Usually by the thousand feet, unless it is of certain sizes and certain lengths and then they are sold by the feet in some parts. We usually sell it by the thousand feet.

Q. Have you any idea or is there any understanding in the trade as to when any of this stuff ceases to be lumber and becomes something else?

A. Well, I have my idea; I don't know that it is held by the trade.

Q. Well, you say you have been thirty-eight years in the business and your ideas must be influenced somewhat by your business?

A. Yes, sir.

Q. I would like to have your ideas.

A. I have generally considered lumber that is cut to sizes and lengths and all finished off for the carpenters to use directly without any cutting or sawing.

Q. Without any fitting?

A. Without any fitting. All fitted is manufactured.

Q. And all below that?

A. All below that is dressed lumber.

By the CHAIRMAN:

Q. I will ask you whether or not the Exhibit 1 here is advanced beyond the condition of lumber which would be known as dressed lumber simply?

A. I don't think it is, however you work it in a planing machine.

78 By Mr. GIBSON:

Q. Please look at Exhibit 1.

A. Yes, sir.

Q. Is not lumber prepared as that adapted for some particular purpose?

A. Yes, sir; a good many purposes.

Q. Is not that piece of lumber there, Exhibit 1, known generally as flooring?

A. Either flooring or sheathing or ceiling. This especial piece would not be used for sheathing, because it is too good a quality.

Q. Wouldn't it ordinarily be used for flooring?
A. Ordinarily for flooring or ceiling.
Q. And it would be known in the trade as flooring or ceiling?
A. Well, it is a name applied to it; yes.
Q. Is that the class to which it would belong?
A. Well, it depends on what the person wants to use it for.
Q. If he wanted to use it for that purpose or the other, it would belong to that class?
A. He would call for a certain width, dressed, tongued, and grooved.
Q. Answer my question. According to your best judgment, what would lumber of that quality be used for ordinarily?
A. Ordinarily it would be used for flooring or ceiling of that quality.
Q. And it would be known in the trade as flooring, would it not?
A. I don't think necessarily that term would apply to it.
Q. Is not ceiling usually beaded?
A. Yes, sir; beaded on the under side; sometimes flooring is on the under side.
Q. Is not ceiling, generally speaking, beaded?
A. Usually; yes, sir.

SAMUEL A. SKEAD, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Samuel A. Skead.
79 Q. Where is your business, and what is it?
A. I am in the white pine export lumber business; Produce Exchange Annex is my office.
Q. How long have you been in that business?
A. I have been in the export lumber business for fifteen years.
Q. Is your trade confined to white pine?
A. White pine and pitch pine.
Q. Do you have it in the rough?
A. We have it in every shape.
Q. You have it rough and have it dressed?
A. Yes, sir.
Q. What would you consider was in the term dressed lumber last year?
A. Anything that went through a planing mill.
Q. You say you are in the exporting business?
A. Yes, sir.
Q. Where do you send lumber?
A. We sell it to the commission merchants here for shipping to the West Indies and South America.
Q. Do you sell domestic lumber?
A. We have been selling both Canada and Michigan lumber.
Q. How is it sold?
A. By the thousand feet.
Q. That is whether it is rough or dressed?
A. Whether it is rough or dressed.
Q. Look at Exhibit 1 and state what, as you understand in the trade, that would be classed under, whether rough or dressed lumber or either of them, or what?

A. A piece of dressed lumber.

Q. Do you give orders to mills?

A. Very frequently; yes, sir.

Q. In giving an order to a mill for a lot of lumber, how do you express yourself—how do you express the order?

A. It depends on what we want; if we want it dressed two sides we say dressed two sides; if we want it dressed one side we say one side; if we want it dressed two sides, tongued and grooved, we tell them so. If it is necessary to have it ravitted we tell them so.

Q. Within your experience, is it an ordinary or a customary
80 thing to make an order for lumber without specifying that as you have said?

A. Frequently some of the exporters may get an order for dressed lumber and not know particularly what they want, and in that case we have to refer back to former certificates, and we refer back and tell them what we have done, and they specify how they want it, dressed two sides or dressed four sides, or tongued and grooved, or whatever the case may be; but we understand that anything that goes through a planing mill is dressed lumber.

Q. Do you know anything about a planing mill?

A. I have seen one once or twice; yes, sir.

Q. Do they do all these processes?

A. They have knives that will do almost everything; they can set the machine to almost anything now; it depends on how good a mechanic is running it.

Q. Do you buy Michigan lumber?

A. Yes, sir.

Q. Supposing you had a trade for the sale of 10,000 feet of a certain grade of Michigan lumber.

A. Yes, sir.

Q. Whether or not if they wanted it planed on one side or planed on two sides and tongued and grooved, you would sell it at about the same price or at the same price that you would sell it rough?

A. That would be a matter of circumstances and freight and everything else; it would depend on how much we could save on our freight, and what kind of a deal we could make.

Q. How would it be in the natural way?

A. Generally the dressing is added to the first cost of the lumber in the rough.

Q. But there are sales where you sell it just as cheap?

A. It depends.

CHARLES L. ADAMS, recalled:

I wish to correct my former testimony. At the time I did not consider, didn't take into consideration that Canadian lumber was foreign lumber.

81 By Mr. TUCKER:

Q. But you do deal in Canadian lumber?

A. We do and always have.

Q. To some extent?

A. At times to quite a large extent; all the time more or less.

STEPHEN DECATUR PIERCE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Stephen Decatur Pierce.
Q. Where is your business and what is it, Mr. Pierce?
A. Lumber; 74 Wall street, New York.
Q. Lumber dealer?
A. Yes, sir.
Q. How long have you been in the business?
A. Thirty years.
Q. Always here?
A. No, sir.
Q. Where have you been otherwise?
A. Burlington, Vermont; Rome, New York, and Saginaw, Michigan.
Q. In Burlington, Vermont, what did you do?
A. Dressed lumber of all kinds.
Q. Did you have a mill there?
A. Yes, sir.
Q. What did you do in Saginaw?
A. I handled lumber more or less there.
Q. Did you have a mill?
A. No; I had no mill. I had my dressing done.
Q. At the present time and for the past thirty years have you handled all kinds of lumber?
A. Yes, sir.
Q. Rough lumber?
A. Yes, sir.
Q. Dressed lumber?
A. Yes, sir.
Q. What, last year, did you understand in the trade, according to your experience, was included within the term dressed lumber?
A. Why, simply lumber; that is all.
Q. What was done to it, anything?
A. Simply dressed, that is all.
Q. What do you mean by dressed?
A. Planed.
Q. Anything else?
A. Nothing else.
82 Q. Do you call tonguing and grooving planing?
A. Yes, sir.
Q. Do you call beading planing?
A. Yes, sir.
Q. All done in a planing mill?
A. Yes, sir.
Q. Was it done in the planing mill that you operated in Burlington?
A. Yes, sir.
Q. All done by one machine?
A. Yes, sir.
Q. With certain attachments?
A. Yes, sir.

Q. That is all dressed lumber?
A. Yes, sir.
Q. Do you understand that that was the understanding in the trade?
A. Yes, sir.
Q. Did you handle large quantities of lumber?
A. Well, anywhere from five to fifteen millions a year.
Q. Will you look at that piece there, Exhibit 1, and say what in the trade that would last year have been understood to be—what sort of lumber?
A. That would be considered dressed lumber.

By Mr. GIBSON:

Q. Suppose that was not cut and grooved and simply planed on one side, what would you call it?
A. We would call it planed on one side; if it was planed on two sides we would call it planed on two sides.
Q. Has that piece of lumber there that you have before you any class name or distinction or designation?
A. Well, it is simply planed, matched; that is all, sir.
Q. Has it any other name designated for its use—for the uses it is to be applied to?
A. No, sir; used for various purposes.
Q. Would not a board of the ordinary size—say that width and thickness and ten, twelve, thirteen, or fifteen feet long—finished in that way, be known as flooring?
A. You can use it as flooring, but not necessarily.
Q. Would it not be known in the trade as flooring?
A. No, sir; I would call that a piece of dressed lumber, planed one side and matched; I would not call it flooring.
83 Q. Is there anything known in the trade as flooring?
A. Yes; you might call that Exhibit 1, if you please. Some people use it for other purposes besides flooring.
Q. Is there such a thing known in the trade as spruce flooring?
A. Yes, sir.
Q. But you would not know that in the trade as spruce flooring?
A. Well, some people might say that was spruce flooring.
Q. You would not call that spruce flooring, though?
A. I don't know that I would; I would say it was a piece of spruce, planed and matched.
Q. What would you call spruce flooring?
A. You might call that.
Q. But you would not?
A. I don't say that I would or not; I don't think I would designate it as flooring particularly; I would call it a piece of spruce, planed and matched.
Q. Do you know what a piece of board cut in that length and finished in that way; do you know what it would be generally called in or known as in the trade?
A. Yes, sir; most people would use that as a flooring.
Q. Answer my question; you do?
A. Yes, sir.
Q. Well, what would it be called?

A. Most of the lumbermen would say that was a piece of flooring?
Q. Would it generally be known as that?
A. I think it would; yes, sir; generally.
Q. That, then, is adapted for some particular use, isn't it?
A. No, sir; not necessarily, at all.
Q. Is not flooring adapted to some use?
A. Certainly it is.
Q. Then if that was known in the trade generally as flooring it would be then known as adapted to some particular use, wouldn't it?
A. No, sir; they don't use it particularly; they use it for some other purposes besides flooring.
Q. Is that beaded?
A. No, sir; that is not beaded.

84 By Mr. TUCKER:

Q. Is it ever bought and sold as flooring?
A. Yes, sir; some people call it flooring.
Q. I mean invoiced or billed as flooring?
A. No, sir; it is billed plain spruce, sized and matched; that is all I ever got.

GEORGE W. EGBERT, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. George W. Egbert.
Q. What is your business?
A. Buyer for W. and A. Leaman.
Q. What is their business?
A. West India shipping merchants.
Q. What do they ship?
A. Furniture.
Q. Do they ship lumber?
A. Yes, sir.
Q. Do you buy lumber?
A. Yes, sir.
Q. Where?
A. All over the country; principally in New York.
Q. Do you buy different kinds of lumber?
A. Yes, sir.
Q. Buy rough lumber?
A. Yes, sir.
Q. Buy dressed lumber?
A. Yes, sir.
Q. How long have you been in the business?
A. Twenty years.
Q. What, as you understand it in the trade, was considered dressed lumber last year?
A. Anything that went through a planing mill.
Q. Look at Exhibit 1. What sort of lumber is that?
A. Dressed lumber.

Q. Do you know how it is bought and sold?
A. Yes, sir.
Q. How?
A. By the thousand feet.
Q. As a rule?
A. As a rule.

By Mr. GIBSON:

Q. Is that piece of lumber there, Exhibit 1—how is that known in the trade?

A. As dressed spruce lumber.

85 Q. As it is prepared there in boards of ordinary length and of that width and thickness, what would it be called?

A. Well, it might be called flooring, or you might use it for ceiling; for different purposes you could use it.

Q. Is it not generally known in the trade, so prepared, as flooring?
A. I should think it would be; yes, sir.
Q. And has it ordinarily been used for that purpose?
A. Not necessarily; no, sir.
Q. But ordinarily it would?
A. They would use it for that purpose to some extent.

Q. If that lumber prepared in that way, of a specified length, could be laid down as flooring, and the only addition to make it would be to cut it and fit it, would it not?

A. I should think so; yes, sir; of course I don't understand that part of the business; we don't use it.

Q. I am asking you as to your knowledge in the lumber business?

A. Yes, but as I say, we don't lay the floors; we only handle the lumber as dealers.

Q. If you would get an order for spruce flooring of that size and that width and that thickness, you would prepare it in that way, would you?
A. If it was ordered in that way; yes, sir.

By Mr. TUCKER:

Q. Do you ever have such an order as that?
A. Not of the spruce; no, sir; our orders are generally white pine.

By Mr. GIBSON:

Q. Is there a white pine flooring?
A. Yes, sir.

Q. If you got an order for white pine flooring, prepared in that way, of a specified length, would you send that?

A. If it were ordered that way.

Q. If it was so prepared it would be ready for fitting, would it not?
A. I should understand it so; yes, sir.

Q. And would be known generally, when so made, as flooring?

A. Not necessarily; no, sir; because it could be used for ceilings.

86 Q. If you had made it for flooring?

A. If it had been ordered and designated for flooring; yes, sir.

By Mr. TUCKER:

Q. You say you are in the export business?
A. Yes, sir.

Q. Do you ever make charter parties for the use of vessels in export?
A. Yes, sir.
Q. Do you make the bills of lading?
A. Yes, sir.
Q. How do you describe that lumber in bills of lading?
A. As so many pieces of dressed spruce lumber, containing so many feet.

FREDERICK W. COLE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Frederick W. Cole.
Q. What is your business, Mr. Cole, now?
A. Wholesale lumber.
Q. Where, here in New York?
A. Yes, sir.
Q. How long have you been in the business?
A. Twenty-odd years.
Q. Always here?
A. No, sir.
Q. Where otherwise?
A. Boston; Burlington, Vermont.
Q. Who were you with in Boston, anybody?
A. The Shepherd and Morse Lumber Company.
Q. Is that a pretty large concern?
A. They and their predecessors have been in the wholesale market here since 1850.
Q. What sort of business did they do when you were with them?
A. I am still with them.
Q. What is the business, in a broad way?
A. It is wholesale lumber for domestic and import trade; manufacturers and jobbers.
Q. Do you have mills?
A. Yes, sir.
Q. Planing mill?
A. Planing mill, sawmill.
87 Q. What is the extent of their business; about the extent of it per annum, in thousand feet?
A. We have got past figuring up the quantity, but I presume it might be a hundred millions a year.

Mr. TUCKER. I offer in evidence a price list of Shepherd and Morse Lumber Company, June 20th, 1880.

(Objected to by counsel for the Government. Objection sustained. Exception.)

Q. Now, I will ask you, Mr. Cole, if in the conducting of the business of the firm of Shepherd and Morse Lumber Company you have any knowledge of yourself about the issuing of price lists by that company?
A. Yes, sir.
Q. Whether or not they have issued any price list for dressing of lumber?

A. Not recently.

Q. Well, how long back, if you have any knowledge of it?

A. I could not say positively, but I presume we have not issued one for three or four years. We have one in force, but we might not distribute it broadcast.

Q. Can you tell of your own knowledge what that one in force represents—whether there is a price for the different degrees of dressing upon it?

A. I think there is.

(Objected to by counsel for the Government as immaterial.)

Q. Will you describe what the price list or what the concern of the Shepherd & Morse Lumber Company charged, or whether they charged different prices for the different degrees of dressing?

A. Well, I will say now, for the benefit of all, that I have not seen that list enough to know what it is, so I will answer without any prejudice on that account whatever that we would ordinarily begin with a charge and schedule prices for planing one side, probably; secondly, for planing two sides, one side and matched, and two sides and matched.

88 By General Appraiser SHARRETTS:

Q. What do you mean by matched—tongued and grooved?

A. Tongued and grooved; yes, sir; one side matched and beaded, also center beaded; two sides and beaded, or center beaded, the same way; also planed one side and jointed, planed two sides and jointed, or we might in some cases planed three sides or planed four sides.

Q. What do you mean by jointed?

A. Planing the edges; tonguing and grooving would be the term that is more in vogue in New York City for matching, but it amounts to the same thing. There would also be a price on that list probably for resawing.

By Mr. TUCKER:

Q. I will ask you, Mr. Cole, if, in your experience, according to your judgment as known in the business or trade, all these different processes that you have last described are included in what is called dressing of lumber?

A. I should say so; yes, sir.

Q. And if any lumber having those processes, more or less of them, upon it would be known as dressed lumber—is that so?

A. Yes, sir; that is my idea.

Q. Look at that Exhibit 1 in front of you.

A. Yes, sir.

Q. What, in 1894, would that be classed as in the lumber business?

A. Planed one side and matched or planed one side, t. and g.

Q. Does it belong to the category of dressed lumber or rough lumber, or either?

A. Yes, sir; it would be dressed lumber.

By Mr. GIBSON:

Q. I call your attention to Exhibit 1. Is a lumber prepared as that adapted to some particular use?

A. Yes, sir.

Q. Lumber so prepared as that, would it not be known in the trade as flooring?

A. Not necessarily.

89 Q. Would it not ordinarily be known as flooring?

A. Well, a piece of that particular size and quality.

Q. I am not speaking of a piece of that size?

A. You mean simply tonguing and grooving?

Q. I am speaking of a board of the ordinary size and length, of that thickness, prepared in that way; would it not ordinarily be known in the trade as flooring?

A. Not absolutely, I don't think.

Q. I do not ask that. Would it not be ordinarily known?

A. It might, ordinarily.

Q. As so prepared it would be fitted for the purpose of flooring, would it not?

A. It might be; yes, sir.

Q. Would it not ordinarily be?

A. It would ordinarily be, but not necessarily. If you will allow me to say a few words——

Q. Not now; wait a moment. Is there any difference between tonguing and grooving of lumber for ceiling purposes and flooring?

A. No, sir.

Q. Are they both grooved at the same distance from the edge of the board?

A. Not always, because that might make flooring——

Q. One moment now.

A. Not always.

Q. Is not ceiling usually grooved and beaded in the center?

A. Not ceiling; no, sir; not always in the center.

Q. Ceiling is grooved a little to one side or the other?

A. Ceiling is a little to one side.

Q. Flooring is usually grooved in the center?

A. Not when it is dressed one side.

Q. If it is dressed on both sides it is then usually grooved in the center, isn't it?

A. Yes, sir.

Q. Are you a member of this firm of the Shepherd and Morse Lumber Company?

A. Yes, sir; a stockholder.

Q. It is a corporation, is it?

A. Yes, sir.

90 WILLIAM E. MARSH, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. William E. Marsh.

Q. Where is your place of business, sir?

A. 45 Broadway, city.

Q. What is your business?

A. Wholesale lumber.
Q. How long have you been in that business?
A. Twenty years and over.
Q. Are you a buyer and seller of lumber?
A. Yes, sir.
Q. Have you anything to do with mills?
A. Not directly.
Q. No interest in any mill?
A. No, sir.
Q. What sorts of lumber do you deal in?
A. Spruce and pine.
Q. Do you deal in rough lumber in the rough condition?
A. Yes, sir.
Q. Any other condition?
A. Dressed.
Q. What do you understand, or what did you in 1894 understand in the trade as being included in the term dressed lumber?
A. Anything that was dressed one or two sides, the edges, or tongued and grooved or matched and beaded—in fact, anything that is put through a machine in one time in its original length, its original state?
Q. How is it bought and sold?
A. By the thousand feet.
Q. Rough measure?
A. Rough measure.
Q. Will you look at that piece in front of you there, Exhibit 1, and state what in your experience the understanding of that would have been last year in the trade—what sort of lumber?
A. Planed on one side.
Q. Anything else, any other sort of lumber, any other description of lumber they would call it?
A. Commonly called flooring.
Q. What else is it—rough lumber?
A. Dressed lumber.
91 Q. You say it is commonly called flooring. What do you mean by that?
A. Because it is not beaded; it is usually used for flooring; not necessarily.
Q. It is called flooring for what reason?
A. As I stated; because it is not beaded it is usually the custom to use it for flooring.
Q. Supposing it had a lot of knots in it; what then?
A. It is not a question of quality; it is a question of size.
Q. Is it adapted to other uses except that of flooring.
A. Certainly.
Q. What?
A. Sheathing or outside ceiling boarding.
Q. About what is the extent of your business, in feet?
A. About twenty-five millions.
Q. Per annum?
A. Per annum; yes, sir.

By Mr. GIBSON:

Q. Lumber prepared as that exhibit is there, with tonguing and grooving, is made that way for the purpose of making it tight, is it not; making a tight joint?

A. I think so; yes, sir.

Q. It does make a tight joint, does it not?

A. I think so; yes, sir.

Q. Ordinarily it would prevent water passing through, would it not?

A. Yes, sir.

Q. Now, lumber prepared like that sample is to be used for some special purpose, such as flooring, sheathing, or lining?

A. Yes, sir.

GUY E. ROBINSON, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Guy E. Robinson.

Q. What is your business?

A. Lumber business.

Q. Where?

A. 18 Broadway, New York.

Q. How long have you been in the business?

A. About fifteen years.

Q. Buying and selling lumber?

A. Buying and selling lumber.

92 Q. What sort of lumber?

A. Pine and spruce lumber, largely.

Q. Do you buy and sell it in the rough?

A. Rough and dressed.

Q. What, last year, did you understand in the trade, or would you understand in the trade, from your experience, as being included within the term dressed lumber?

A. Well, I should say anything that went through a planing machine and was dressed.

Q. You look at that piece in front of you there and state what, as you understand that, that would have been considered in the trade last year?

A. I should say dressed lumber.

Q. Do you deal in foreign lumber?

A. Buying foreign lumber, do you mean?

Q. Yes, sir.

A. No, sir. What do you mean by foreign lumber?

Q. I mean any lumber produced out of the United States.

A. We buy some in Canada.

Q. You buy in this country, too?

A. Yes, sir; largely in this country.

Q. You don't have any mill?

A. No mill.

Q. You are simply buyers and sellers of lumber?

A. Buyers and sellers of lumber.

Q. Do you sell to the consumers—carpenters and builders?
A. No, sir.
Q. Do you sell wholesale?
A. We sell to the retail yards.
Q. What is the ordinary way of making a bill of lumber of that sort or making an order for lumber of that sort; how is it expressed on paper?
A. Dressed one side and matched, I should say; the way I always would.
Q. Is it ever called flooring?
A. Well, do you mean that class of lumber; that width?
Q. The lumber in that condition.
A. Yes, sir.
Q. I mean in the bill?
A. No, sir; never in the bill.
Q. Never in the bill?
A. No, sir.
Q. It is always described by the demensions or the condition of it?
A. Yes, sir.
93 Q. Or in the order—neither in the bill nor in the order?
A. No.

ROBERT W. HIGBIE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?
A. Robert W. Higbie.
Q. What is your business, sir?
A. I am in the lumber business.
Q. Here in New York?
A. At present; yes, sir.
Q. How long have you been in the business?
A. Ten years.
Q. Here all the time?
A. No, sir.
Q. Where else?
A. Jamaica, Long Island.
Q. What were you doing there?
A. I kept a retail lumber yard there, selling to the carpenters.
Q. Did you sell different kinds of lumber?
A. Yes, sir; rough lumber, dressed lumber.
Q. What last year did you understand was included in the term dressed lumber, from your experience in the business?
A. Any lumber that had been run through a planing mill and not fitted to a peculiar length.
Q. Look at Exhibit 1 and state what that was known in the trade as last year.
A. That is a piece of spruce, dressed into flooring.
Q. That is dressed lumber?
A. Dressed lumber.
Q. How is it bought and sold?

A. Either by the thousand feet or by the piece.

Q. What is the more general way?

A. Well, I should say in spruce there was not any more general way; both ways equally.

WILLIAM B. MILLARD, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. What is your full name?

A. William B. Millard.

94 Q. Where do you reside, Mr. Millard?

A. I am stopping at Rouses Point now; my home is at New Hamburg, on the Hudson.

Q. What is your business?

A. Lumber business, wholesale and retail.

Q. How long have you been in that business?

A. I went on a lumber yard with my father in 1852. I went into partnership with him in 1863.

Q. What is the extent of your business?

A. Well, from seventy to eighty millions. I bought in 1893 about eighty millions of lumber.

Q. Where are your mills located?

A. At Rouses Point.

Q. Any other place?

A. No, sir; not that I know.

Q. Have you any planing mills?

A. Yes, sir.

Q. And mills for tonguing and grooving?

A. Yes, sir.

Q. And molding?

A. Yes, sir.

Q. Anything else?

A. We have got dry kilns. I got box machinery for making boxes, making moldings, making casings.

Q. What part of the country do you sell your lumber?

A. All through the New England States, New York State and Pennsylvania, New Jersey.

Q. Are you familiar with the manufactures of lumber in the mill?

A. Yes, sir; been around a planing mill for twenty-five or thirty years; attended to it myself; examined the lumber when it came in; examined it when it went out; sorted it; manipulated it; have always done it.

Q. Are you familiar with the kinds of machines used?

A. Yes, sir.

Q. Do you know what the customs and usages are in the lumber trade through the country; in different parts of the country?

A. I think so; yes, sir.

Q. In what parts of the country do you know that you are familiar with them?

A. I ought to know those where I have customers, and more particularly the Hudson River and New York.

95 Q. And the New England States?

A. Yes, sir; I am manufacturing every day lumber for New England.

Q. In Pennsylvania?

A. Yes, sir.

Q. In Michigan?

A. Yes, sir; I have bought lumber land in Michigan, cut the trees down, and made the lumber.

Q. Do you know the words that are usually applied to the different classes of lumber in the trade?

A. Yes, sir.

Q. Were you familiar with the words dressed lumber, as used in the timber trade in August, 1894, and prior thereto?

A. Yes, sir.

Q. How was it used, and what classes of lumber did it designate?

A. Well, if a man sent me an order for dressed lumber, I would consider that anything planed on one side would fill the bill.

Q. Please examine Exhibit 1 and tell the Board by what name it was known in the trade during the month of August, 1894, and prior to that time.

A. Well, I should call that a poorly piece of worked flooring. I call it flooring because it is not dressed, only on one side, and I call it flooring because it is dressed and matched. Really, flooring should—the tongue or the groove should be lower down on the edge, so that you could have all the wear you can on it; that is the way we dress lumber at Rouse's Point, and we have gauges given us of the sizes and we fit those gauges right to each piece as we set our machines.

Q. Would that come under the designation of dressed lumber, as known in the trade?

A. Well, if you added the word matched to it it would; but as dressed, if a man sent me an order for dressed lumber and I dressed and matched it I think he would have good reason to kick.

Q. Would lumber prepared in that way be known in the trade as dressed lumber?

A. I could not say it was not dressed lumber, but I would not know it as dressed lumber; I would call it dressed flooring or dressed and matched; planed and matched.

96 Q. In your judgment, has that lumber gone beyond the process of being dressed?

A. By all means I should say so.

Q. Are you familiar with machines used to make flooring?

A. Yes, sir; we have four in our mill.

Q. They are made especially for that purpose?

A. Yes, sir; we have four machines, and we have machines made for dressing solely; they have no side cutters on at all, and I just bought one flooring machine this year and I bought a molder this year; they are called flooring machines.

Q. You have machines and there are machines known as dressing machines?

A. Yes, sir.

Q. And when the lumber passes through those it is known as dressed lumber, is it not?

A. Yes, sir.

Q. And those machines dress the surface of the lumber on one or both sides, do they not?

A. Yes, sir.

Q. And when lumber is dressed on one or both sides it is known as dressed lumber?

A. I consider it dressed lumber, and it has gone as far as dressed lumber would carry it.

By Mr. SPRATT:

Q. What would you term Exhibit 2?

A. I should call it a piece of molded base; it looks to me like a piece off of the end of molded base.

Q. Would you deem that simply dressed lumber?

A. Oh, no, sir.

Q. What is it with respect to dressed or manufactured?

A. That is manufactured; all ready to put on.

Q. Now, is there a machine known in the market as a machine to do that particular kind of work?

A. Yes, sir; I bought one this year especially for it.

Q. Does it require more skill and a better kind of machine and an entirely different one to do that kind of work than simply dressing lumber?

A. Yes, sir.

Q. It costs more money, both in the machine and in the work?

A. Yes, sir.

97 Q. I hand you exhibit which we present here, and which is marked in evidence "Exhibit 8, 27625–B, July 24th, 1895." What is that exhibit termed in the trade?

A. That is molded. It has got an o. g. or a panel molding worked on the edge of the lumber. You could have that for a base if you wanted it.

Q. Has that progressed further than dressed lumber, according to the knowledge of the trade?

A. By all means.

Q. What would be a fair term to call it now, in respect to wood?

A. I would call it molded base or casing.

Q. Is it manufactured wood?

A. Yes, sir.

Q. Does it require a different machine to make it than an ordinary machine used for dressing?

A. Yes, sir.

Q. I show you Exhibit 9. Describe what that exhibit is.

A. That is a piece of molded casing to plant right on the casing of a door.

(Same marked in evidence "Exhibit 9, 27625–B, July 24th, 1895.")

Q. Is is complete—ready to attach to the house?

A. Yes, sir; all ready.

Q. Is that termed in the trade and understood in the trade, and was in 1894 understood in the trade, to be simply dressed lumber?

A. No, sir.
Q. Was it considered in 1894?
A. That is manufactured as far as you can go with it.
Q. You would call it manufactured wood?
A. Yes, sir.
Q. Does it require a different kind of a machine to put that wood in that state than a machine used to dress lumber with?
A. Yes, sir.
Q. And requires different treatment?
A. Altogether.
Q. I hand you Exhibit 10. What do you call that?
A. That is a casing also.
(Same marked in evidence "Exhibit 10, 27625–B, July 24th, 1895.")

98 Q. Is that worked in that condition by machines?
A. Yes, sir.
Q. Is that what is known to the trade as dressed lumber?
A. No, sir.
Q. Is it advanced by process to a different state?
A. Yes, sir.
Q. What is it known to the trade with respect to——
A. That is molded to manufactured lumber.
Q. Is it ready for use?
A. Ready to put in a house. We keep that in stock in our yards.
Q. I show you another exhibit. What is that known to the trade as?
A. That is beaded casing—the same thing; just a plain beaded casing.
(Same marked in evidence "Exhibit 11, 27625–B, July 24th, 1895.")
Q. It is not as expensive a casing as some of the others?
A. No, sir.
Q. Does it answer the same purpose, except it is to be used in a cheaper house?
A. Yes, sir.
Q. And is it advanced further than what the trade understood to be dressed lumber?
A. Yes, sir.
Q. And as they understood it in 1894, prior to August, and for years prior to that time?
A. Yes, sir.
Q. What should you term it, then, now, and in 1894?
A. I should term it manufactured lumber.
Q. Manufactured for a special purpose?
A. Yes, sir.
Q. And ready for use?
A. Yes, sir.
Q. I show you another exhibit.
A. Well, that is a plain casing, still cheaper yet.
(Same marked in evidence "Exhibit 12, 27625–B, July 24th, 1895.")
Q. It is a casing, but used for a poorer house?
A. Yes, sir; just beveled on the edge.
Q. Is it fit for use—ready for use?
A. Yes, sir.

Q. Is it manufactured wood?

A. Yes, sir; it is all ready to put up.

99 Q. Is that advanced further than the mere dressing?

A. Yes, sir.

Q. And was recognized by the trade in 1894 and prior thereto as such?

A. Yes, sir.

Q. I now show you an ordinary casing, used in an ordinary frame house; what do you call that?

A. I would call that a piece of square casing.

(Same marked in evidence "Exhibit 13, 27625–B, July 24th, 1895.")

Q. Ready for use?

A. Ready for use; the edges are all dressed.

Q. Ready to put on the house?

A. Ready to put right on.

Q. Is it manufactured lumber or dressed lumber?

A. I should call that manufactured.

Q. How is it used, with respect of the kind of house, compared with some of the other casings which I have shown you, as to whether it would be used on a more moderate house in price?

A. This is for an ordinary house. Sometimes they plant a molding right along the edge.

Q. I show you another exhibit; what do you term that?

A. I call that dressed lumber.

(Same marked in evidence "Exhibit 14, 27625–B, July 24th, 1895.")

Q. That is what the trade understood in 1894 and prior thereto as simply dressed lumber?

A. That is all there is to it; that is as near to it as I explained it.

Q. I show you another exhibit; what is that known to the trade as and what was that known to the trade as in 1894?

A. That is dressed up for flooring; I should say dressed two sides and matched.

(Same marked in evidence "Exhibit 15, 27625–B, July 24th, 1895.")

Q. Is that all ready—manufactured—to put down in the house?

A. Yes, sir.

Q. Is it a manufactured article?

A. Yes, sir.

100 Q. Ready for use?

A. Ready for use to lay down.

Q. Would you call that or was it known to the trade in 1894 and prior thereto as dressed lumber.

A. No, sir.

Q. What was it known to the trade as?

A. I should say it was manufactured for a definite purpose, a particular purpose.

Q. I show you another exhibit; what do you term that?

A. Well, that is a center-beaded ceiling.

(Same marked in evidence "Exhibit 16, 27625–B, July 24th, 1895.")

Q. Used for what purpose, as known in the trade?

A. Used as ceiling, overhead.

Q. Is it manufactured, ready for use?

A. Yes, sir.

Q. Does the trade consider it as a manufactured article?

A. Yes, sir; by all means.

Q. Was it understood in the trade in 1894 or prior thereto as dressed lumber simply?

A. No, sir; I think that board is—all I can say is dressed lumber [indicating Exhibit 14.]

Q. I show you another exhibit.

A. I call that different from a good many lumbermen; I call it fancy novelty.

(Same marked in evidence "Exhibit 17, 27625–B, July 24th, 1895.")

Q. What is it used for?

A. It is used on buildings to represent a narrow siding.

Q. Does it take the place of clapboards?

A. Yes, sir.

Q. Is that ready to be used upon the building?

A. Yes, sir.

Q. All complete?

A. Yes, sir.

Q. What is it, manufactured or dressed lumber?

A. It is manufactured.

Q. Was it known to the trade in 1894 or prior thereto as dressed lumber?

A. No, sir; oh, no.

Q. I show you another exhibit; what was that known to the trade as in 1894 and prior thereto?

A. Well, that is a three-beaded ceiling.

101 (Same marked in evidence "Exhibit 18, 27625–B, July 24th, 1895.")

Q. Is that made upon the ordinary dressing machine—planing machine?

A. No, sir. It could be made on to it, I suppose.

Q. I mean as used in business?

A. Not on the regular dressing machine, no.

Q. Does it require a different kind of a machine than a simple dressing machine?

A. I have got two machines in my mill I could not make it on.

Q. Is that complete, ready to use?

A. Yes, sir.

Q. Do you designate that as dressed lumber or as manufactured lumber?

A. Manufactured for a definite purpose.

Q. I show you another exhibit; what is that known to the trade as?

A. That is three-inch lumber dressed and matched, already dressed for a spline; they do that so as to give as much surface as possible on here without cutting it away for a tongue, that little piece of lumber.

Q. The splines saves the lumber?

A. Yes, sir; you can take a plank 11 inches wide and all you have got to do is to just dress the edges a little and make your groove here and make the spline and you will get the full width of the lumber.

(Same marked in evidence "Exhibit 19, 27625–B, July 24th, 1895.")

Q. Is that designated as factory roofing?
A. Yes, sir.
Q. And when sold is it designated lengths to be used upon factories?
A. Yes, sir; I am dressing now lumber just all 16 feet long; the man would not have anything else; lumber shipped out of Canada.
Q. Is that kind of material manufactured and ready for use?
A. All ready to put up.
Q. Is it advanced further than the state of dressed lumber, as known to the trade prior to 1894?
A. Yes, sir.
Q. And is complete, ready to be put upon the roof or the floor?
A. All ready; I don't know what else to do with it.
102 Q. I show you another exhibit, and I call your attention to that; what is that known to the trade now and prior to 1894?
A. That is regular floor. It ain't regular, because you have a little extra done to it; it is taken out there so it won't warp up. Hard wood is naturally inclined to warp, and that hollow is made for that purpose. That is flooring, and cannot be used for anything else.
(Same marked in evidence "Exhibit 20, 27625–B, July 24th, 1895.")
Q. Has that been advanced beyond the stage of what is known to the trade as dressed lumber or dressed wood?
A. Yes, sir; far beyond.
Q. What is it?
A. Manufactured lumber for a definite purpose.
Q. Manufactured wood for a definite purpose?
A. Yes, sir.
Q. Is it complete, ready to be placed upon the floor?
A. Yes, sir.

By Mr. TUCKER:

Q. Referring to Exhibit 1, I will ask you if in the year 1894 whether or not the term dressed lumber would have included in the trade, as understood in the trade, included such lumber as that?
A. No, sir.
Q. Would not?
A. No, sir.
Q. Where would the term dressed lumber have stopped in the preparation of that lumber?
A. Dressing the edges.
Q. If it had been dressed on the edges it would have been dressed lumber, would it?
A. Not dressed; that is, jointed on the edges.
Q. I thought you said dressing on the edges?
A. You call it dressing; I call it joining.
Q. Where does your line stop with reference to that piece?
A. When it is surfaced off on that size or planed to a uniform surface.
Q. On one side?
A. On one side.
Q. If it was only planed on one side it is dressed lumber?
A. Yes, sir.
103 Q. If it is planed on two sides it is not dressed lumber?

A. You might turn it over and dress it on the other side; I can't tell.

Q. Can't you say positively one way or the other?

A. If a man sent me an order for dressed lumber I should think that I had filled the bill if I dressed it on one side.

Q. Have you had an order for dressed lumber with nothing else connected with the order to define what it was?

A. I think I have.

Q. Do you know that you have?

A. Yes, sir.

Q. Have you got such an order with you?

A. No, sir.

Q. Can you produce such an order?

A. I don't think I can.

Q. Have you any means of producing such an order as that?

A. No, sir; they are very scarce; I don't know where they are.

Q. It is not a common thing?

A. No, sir.

Q. You have had such an order?

A. Yes, sir.

Q. When you have such an order what did you do with it?

A. I asked the man how much further he wanted it done.

Q. Did you comply with the order when he sent you the order simply for dressed lumber?

A. I don't think I did.

Q. You asked him what sort of dressed lumber he wanted?

A. I asked him what side he wanted it dressed on. Twenty-five years ago we didn't know very much about planing on two sides.

Q. Take Exhibit 1 again. Is that ever bought and sold as flooring? What I mean is, is it described in your invoice or your bill or your order as flooring?

A. Yes, sir.

Q. Alone; isn't there something else with it?

A. Well, when it is flooring——

Q. Isn't there some other description attached to it?

A. I can not really remember.

Q. Is or is it not; is there some other description attached to it?

A. You could call it dressed on one side and matched, but I know it is flooring.

104 Q. You have given a description of flooring planed one side and matched?

A. Yes, sir.

Q. Then your description of flooring is not the entire description of flooring, is it?

A. No; I don't know as it is. I say yellow-pine flooring; I guess it covers the entire description. I don't think any of my bills call for dressed one side and matched; it may be in some instances that one may be dressed one side and matched and the other made into flooring.

Q. Do you have price lists?

A. I think we have.

Q. On this price list what do you say of this matter of dressing?

A. I think I mention flooring.

Q. What do you say in connection with it?

A. Dressed one side and matched, probably.

Q. Suppose it is dressed two sides and matched?

A. On the Hudson River we don't make——

Q. This tariff law is not for the Hudson River; it is for the United States.

A. I consider that lumber dressed on two sides could be made flooring and called flooring.

Q. But not described in that as flooring?

A. Yes, sir; if a man sent me an order for flooring I would know what to make of it.

Q. Does he send you an order for flooring?

A. Yes, sir.

Q. Without any description further than that?

A. No; I don't know as I have. I would not say that I have received an order that way, and I would not say I have not. I would not say either way. It is an intelligent order, anyway.

Q. Now, in your mills you say that you have various machines?

A. Yes, sir.

Q. And that you have machines for making these various forms which are represented by these exhibits here?

A. Yes, sir.

Q. Now, whether or not that Exhibit 1 is all made on a planing machine, the work that is applied to that wood?

A. Made on a flooring machine.

105 Q. What is the distinction between a flooring machine and a planing machine?

A. One has got side cutters on it and the other has not.

Q. Is that a recognized description in the trade?

A. Yes, sir. I have got two machines that hasn't got any side cutters on and they are dressing machines, nothing else. When I come to put side cutters onto them, I call it a flooring machine. I call it that and buy it as that; it ain't called a planing machine; never called it so. People might speak of it as a planing machine, but it ain't a planing machine; it is not so known in the trade.

Q. Is it a patented machine?

A. I think it was, but those patents have gone over.

Q. Is it described in any way?

A. Yes, sir; an A No. 1 flooring machine, on the illustrated catalogues.

Q. Has there been an improvement or improvements in the matter of these machines which have produced this sort of lumber the last ten or fifteen years?

A. Yes, sir.

Q. A good many changes in them?

A. Quite a number of changes.

Q. So that machines that accomplish certain purposes a few years ago have attachments which accomplish additional purposes to-day?

A. Some have extra attachments attached to them; some has an extra under cutter to them; some has conveniences for to shift the side cutters, so that they hang on a bevel, and there is altogether a difference between

a molding machine and a flooring machine; the flooring machine, the heads stand up straight.

Q. Do you have anything to do with lumber that is brought here from foreign countries?

A. Yes, sir.

Q. In what way?

A. By cars; comes right into my yard. I am within a mile of the Canada line; my property runs right up to the Government reservation at Rouses Point. I am bringing lumber in most every day.

106 Q. Do you bring it in in the rough?

A. Yes, sir.

Q. Do you ever bring it in with anything done to it?

A. No, sir; I don't know as I ever had a piece of lumber dressed in Canada in my life or matched. Well, I will take that back. I did the other day. I had 271 feet; I put it on my wagon and brought it down.

Q. You had a purpose in that, I suppose?

A. Yes, sir; I had a purpose in it.

Q. Are all these samples here, speaking collectively of them, are they samples of actual productions of lumber?

A. Yes, sir.

Q. What I mean is, is there such lumber in such conditions as these samples, generally known in the trade, bought and sold and dealt in?

A. Yes, sir; I am working them all the time; I am working some of Exhibit 19 now, except the party wants the tongue put to it.

Q. You have been in the lumber business a good while, haven't you?

A. Yes, sir; I went on the yard with my father in 1852.

Q. Then you are pretty familiar with the different sorts of lumber and with the growth of the processes of manufacturing lumber and handling lumber?

A. Yes, sir; I have retailed it and made out price lists and sorted it, dressed it, examined it, inspected it, measured it—brought up to it.

Q. Does any of this stuff ever take any other name than lumber?

A. We call Exhibit 19 a piece of three-inch deal.

Q. Does it come under the general category of lumber?

A. Yes, sir.

Q. All of this here comes under the general category of lumber, does it?

A. Yes, sir; I should say so; manufactured lumber.

Q. That is, you consider it is advanced beyond its natural condition of lumber, still it has not lost its name or its description as lumber?

A. If a man kept dressed lumber I would call it he kept a lumber yard.

Q. That does not respond to my question?

107 A. I don't know what your idea is in asking me the question.

Q. I am asking you whether any of this lumber has lost its character as lumber in these various conditions; isn't it still lumber?

A. I should consider it lumber; manufactured lumber, I should call it.

Q. All of it?

A. Yes, sir; manufactured lumber.

Q. What would you call a manufacture' of lumber?

A. Well, the broad term; it is the man that saws it from the log.

Q. You call that a manufacture of lumber?

A. Yes, sir; if I take it into my mill and saw it, I would call it a manufacture of lumber.

Q. What is lumber in itself?

A. Logs sawed into dimensions—stuff; take logs in the rough; I didn't call round logs lumber; it ain't known in the trade as lumber.

Q. That is timber, I suppose?

A. Yes, sir; timber. The distinction between timber and lumber was very indefinite; I should consider that if my policy of insurance said lumber, it would cover the timber on the yard.

Q. I suppose you have an insurance policy?

A. Yes, sir.

Q. You would understand an insurance policy simply describing lumber would cover these, all these various samples here?

A. I should say so; it would cover it just as much as rough lumber.

Q. Would you have any doubt about it?

A. No; I should say not.

Q. Would you have doubts sufficient so you would go to the man that insured you and inquire and find out?

A. Well, no.

Q. You would feel perfectly safe and sure that your policy was safe?

A. Yes, sir; my policy is lumber, timber, laths; I worded it in case there was anything, but I think the word lumber would cover timber.

Q. Would you be satisfied with a policy of that sort?

A. I have, yes, sir; I have done it.

108 Q. Is that your practice?

A. Well, I think my insurance policy says lumber, timber, &c.; that is the way I think it says.

Further hearing adjourned to to-morrow, July 25th, 1895, at 10 o'clock a. m.

NEW YORK, *Thursday, July 25th, 1895.*
(Ten o'clock a. m.)

Met pursuant to adjournment.

Present: Parties and counsel as before.

FRANK DUDLEY, recalled:

By Mr. TUCKER:

Q. Mr. Dudley, have you received or are you in possession of what you term as the mill specifications of the cars of lumber in question in this protest?

A. I have.

Q. Will you produce them?

A. Yes, sir (producing papers).

Q. Were those received in your office in Portland in the usual course of business, from the mills in Canada that produced the lumber?

A. I presume they were; I had no particular knowledge of it at the time.

Q. Have you any doubt that?

A. None whatever.

By the CHAIRMAN:

Q. In the usual course of your business?

A. Certainly.

By Mr. TUCKER:

Q. Will you be kind enough to read those specifications, explaining each and every one as you go through it; where there is a letter, will you explain what that letter means, and give the number of the cars?

A. Shall I read the date, the point of shipment?

109 Q. Read everything.

A. Scotstown, June 19th, 1895, order number 452, Pawtucket, specification of one car.

By Mr. GIBSON:

Q. Please give the number of the car.

A. That comes later. I am taking these things in rotation.

Q. Read the car first.

A. C. P. 13700, specification of 1 car; P. 1 S. & M.

By the CHAIRMAN:

Q. What does that mean?

A. Planed one side and matched, matched meaning the same as tongued and grooved. Dry and well dressed; shipped to H. E. Wellman, Pawtucket, Rhode Island, via B. & M. and Worcester; B. & M. means Boston and Maine. There are some notations about charging at the office in Portland has nothing to do with it. 262 pieces, 1 inch thick, 4 inches wide, 12 feet long, containing 1,048 feet; 258 pieces, 1 by 4, 13 feet, containing 1,118 feet; 166 pieces, 1 by 4, 14 feet, containing 775 feet; 86 pieces, 1 by 4, 15 feet, containing 430 feet; 665 pieces, 1 by 4, 16 feet, containing 3,547 feet; making totals of 1,437 pieces, 6,918 feet.

Q. How does that compare with Exhibit 1?

A. That is the same thing, barring the lengths of course, the same style of dressing.

Q. Substantially the same dimensions?

A. It is exactly the same in this case. There are other dimensions in this paper, though. There is a list of 5 inches wide dressed in the same way; 378 pieces, 1 inch thick, 5 inches wide, 12 feet long, containing 1,890 feet; 335 pieces, 1 inch thick, five inches wide, 13 feet long, containing 1,815 feet; 294 pieces, 5 inches wide, 14 feet long, 1 inch thick, containing 1,715 feet.

Q. The only difference is in the width, is it, of the pieces on that?

A. That is the same style of lumber.

Q. Take the next one; car what?

A. Car 15414.

110 Q. Give the dimensions, and state what it is like.

A. 242 pieces, 2 inches thick, 6 inches wide, 16 feet long, containing 3,872 feet.

Q. What is that similar to here?

A. Similar to Exhibit 1, only it is two inches thick instead of one; same style of dressing; that is described as P. 1 S. & M., means planed one side and matched or tongued and grooved. 83 pieces, 2 inches thick, 7 inches wide, 16 feet long, containing 1,549 feet.

Q. All of that car two inches thick?

A. All of it, sir.

Q. Well, go to the next one.

A. Car 11814; 97 pieces, 3 inches thick, 6 inches wide, 16 feet long, containing 2,328 feet; 128 pieces, 3 inches thick, 7 inches long, 3,584 feet, planed one side and grooved and beaded.

Q. Is that the contents of that car substantially?

A. About half the contents; the other pieces are 8 and 9 inches wide, same length and same thickness and planed one side, grooved and beaded. Here is car 3080; 90 pieces, 3 inches thick, 6 inches wide, 16 feet long, containing 2,160 feet; 104 pieces, 3 inches thick.

Q. State whether they are all substantially like that.

A. Excepting the widths, they are the same.

By Mr. TUCKER:

Q. What is the condition of them—what is done to them?

A. Planed one side and grooved; P. 1 S. & G. are the initials. The next is car 6953; 40 pieces, 3 by 8 inches by 10 feet long, made on a little different form.

By General Appraiser WILKINSON:

Q. What is done to that?

A. Planed one side and grooved. Car number 53, practically the same thing. There might be a slight variation in the widths. Car number 22118, the same style of dressing; the lengths are a little different.

111 By Mr. TUCKER:

Q. The same thickness?

A. Yes, sir; three inches. Car 39, the same thing, same thickness, same style of dressing; that covers the list.

Q. Is that the whole?

A. That is all.

By General Appraiser WILKINSON:

Q. I see that these carloads are described—the lumber is—as butted the exact lengths. We would like to have the explanation of that, why that was?

A. Because the orders required them, and because it is cheaper to do it at the mill than for a carpenter to do it with a handsaw.

Q. What is such lumber intended for?

A. I think it is for under factory flooring, flooring in a general way. We call it factory flooring, that is the thick kind, what we call plank.

(Paper referred to marked in evidence "Exhibit A.")

By Mr. GIBSON:

Q. Mr. Dudley, who was this order received from for this lumber?

A. I will have to have the papers to see. I require those papers to answer that.

Q. The papers will show, will they?

A. I know one of them will; I recollect one. I could not identify the car.

Q. This lumber that is three inches thick, what was that used for?

A. I think that particular lot is used for factory flooring—factory under flooring—as I stated just now.

Q. Where was the factory located that it was used for?

A. I should have to have the papers to see.

Q. I hand you the papers, Exhibit A.

A. C. P. car 30080, shipped to Bondsville, Mass. I presume the factory is there; I have not seen it.

Q. Now, the next car, containing three-inch stuff?

A. Holyoke.

Q. What factory was that for?

A. I could not say; it was for some factory there, as I under-
112 stand. I have not been directly informed it is for the factory, but it is the kind of goods used for that construction.

Q. And the next?

A. That would be the same, going to Holyoke.

Q. The same party?

A. Yes, sir; J. R. Hosmer seems to be the consignee.

Q. And the next car, 22118?

A. That is going to New Haven, Conn. I cannot say what factory it is for.

Q. That is also factory flooring, is it?

A. The same thing.

Q. And the next car, 39?

A. That is going to Holyoke, a part of the same order that was mentioned before.

Q. That is consigned to whom?

A. J. R. Hosmer.

Q. Now, I notice here in car 39 a specification, P. 1 S. & G. and butted exact lengths. What does that mean?

A. It means planed one side and grooved and butted to exact lengths; it means cut with a saw to just the length specified there.

Q. The whole contents of that car then were of that description?

A. Yes, sir.

Q. I notice that the contents of car 22118, the same specifications are used. That indicates, does it, that the contents of that car were cut an exact length and butted for a particular use, does it?

A. I understand it so; yes, sir.

Q. And car 53 contains the same specifications of contents. That is also true as to that car, is it?

A. Yes, sir.

Q. Car number 6953 contains the same specifications. That is true as to the contents of that car, is it?

A. Yes, sir.

Q. Now, car number 30080, the specification is 1 car, mill run, P. 1 S. & G., cut 95. Will you please state what those specifications mean, and the initials?

A. It means that the lumber is planed one side and grooved, cut 95; it means it was sawn in 1895.

Q. What is the thickness of that?

A. Three inches.

113 Q. Now, car 11814; specifications are 1 car, mill run, cut 95. Will you state what those specifications mean?

A. Planed one side and grooved and beaded.

Q. That is the description of the contents of the whole car, is it?

A. Yes, sir.

Q. And the thickness?

A. Three inches thick.

Q. Now, car number 15414; specified 1 car, mill run, P. 1 S. & M., cut 95. Will you please explain those?

A. It means planed one side and matched, and made from lumber sawn in 1895.

Q. What was that lumber used for or intended for?

A. I can not say; it seems to be a single car.

Q. What kind of lumber is that?

A. Spruce lumber.

Q. And it is known as plank, is it, in regard to its thickness?

A. Yes, sir.

Q. That is all two inches wide?

A. No, sir.

Q. Thickness, I mean.

A. Yes, sir.

Q. Then there is only a single car containing lumber one inch in thickness and four inches in width; is that so?

A. Yes, sir; it is not all four inches in width, though.

Q. Well, there is no other width stated in the bill of lading, is there?

A. That is not a bill of lading.

Q. In the invoice.

A. Yes, sir.

Q. There is another width stated in the invoice?

A. Yes, sir.

Q. Will you please show it to us.

A. One inch thick, five inches wide [indicating on Exhibit A].

Q. The only other width, then, is five inches?

A. Yes, sir.

Q. Out of these eight carloads, then, of lumber, there was only one carload in which the lumber was one inch thick and from four to five inches wide; is that not so?

A. Yes, sir.

Q. There were six cars, then, in which the lumber was three inches in thickness and the width of it running from six to eleven inches?

A. Let me look at that and verify the widths. [After examining exhibit.] Yes, sir.

114 Q. And the length was from ten to twenty feet, was it not?

A. Yes, sir.

WILLIAM B. MILLARD, recalled:

By Mr. TUCKER:

Q. Mr. Millard, near the close of the evidence yesterday you testified that you had different sorts of mills—planing mills, and also tonguing and grooving mills?

A. Machines.

Q. And dressing mills. Do you mean to say that you have separate buildings?

A. No; I didn't say mills; I said machines.

Q. I simply want to know whether you have different buildings in which these different sorts of work are done?

A. It is all in one building; under one roof.

Q. What is that building called; what would it be known as in the trade?

A. Well, it is known at Rouses Point as a box factory.

Q. As a box factory?

A. Yes, sir.

Q. Do you make boxes there?

A. Yes, sir.

Q. And do you make all this sort of lumber?

A. Yes, sir.

Q. Is it ever called a lumber factory or a lumber mill?

A. No, sir.

Q. You don't consider yourself a lumber dealer, then, or a lumber manufacturer.

A. I consider myself a lumber dealer, but it is not called a lumber mill.

Q. Well, are you a lumber manufacturer?

A. Well, I don't take the logs and saw them up.

Q. Well, what do you do, if I may ask you?

A. I take rough lumber and dress it; manufacture it.

Q. That is your business there?

A. That is my business there, and making boxes.

Q. Making boxes?

A. Yes, sir.

Q. You make boxes complete—put them all together?

A. No, sir; we manufacture them into shooks.

Q. Are they boxes, then?

115 A. They are parts of boxes, and we manufacture boxes; we are manufacturing boxes and nailing them together.

Q. So you dress lumber?

A. Yes, sir.

Q. And you make box shoots?

A. Yes, sir.

Q. And you make boxes?

A. Yes, sir.

Q. And it is called a box factory?

A. Called a box factory; yes, sir.

Q. Now, you were asked, taking that Exhibit 1, whether or not the term dressed lumber would in 1894 have been understood in the trade to have included such lumber as that; you were asked that question?

A. Yes, sir.

Q. You said in reply that if it was described as dressed and matched you thought it would. Now, is there such a thing as dressed and matched lumber known in the trade?

A. Yes, sir.

Q. As distinctive from dressed lumber?

A. Yes, sir; planed and matched or dressed and matched.

Q. Exactly. Now, would dressed lumber include the whole or does it not include the whole?

A. No, sir; I call dressed lumber that [indicating]. It is all lumber.

Q. I am not asking you what you call it; I am asking you, from your experience, of what your trade would call it in the lumber business?

A. I don't call it and my trade don't call it. It ain't an intelligent question to ask me.

Q. You must excuse me if my questions are not intelligent. I don't understand the lumber business as well as you do; I acknowledge that. Now, you have testified as to flooring machines; are they called flooring machines?

A. Yes, sir.

Q. Are they in this same building?

A. Yes, sir.

Q Are they considered and are they separate from and distinct from what you call dressing machines?

A. Yes, sir.

Q. Are these dressing machines called dressing machines?

A. Surfacing machines and dressing machines.

116 Q. Which are they called?

A. They are called both.

Q. Are they marked; is there any marker's mark on them?

A. Yes, sir; there is a marker's mark.

Q. What does he call them?

A. I don't know as there is any description of the machine on the machine.

Q. Doesn't he give some name to the machine?

A. No, sir; no more than the date of manufacture and his own name on it.

Q. Then the machine is known in the trade as a dressing machine or as a surfacing machine?

A. Surfacing machine; yes, sir.

Q. Is it known as a planing machine?

A. I should suppose you could call it a planing machine.

Q. I don't want any supposing. Is it known in the trade as a planing machine?

A. Yes, sir; I suppose it would be called that.

Q. I beg your pardon. I don't want any suppose; I want a direct answer—the fact, if you know it. Is it called in the trade and known as a planing machine?

A. I think it is.

Q. Have you any doubt about it?

A. Well, what another man would say it was, a surfacer; I would call it a surfacer.

Q. That is not the question. I am asking you whether you have any doubt whether this machine which you have described is known in the trade as a planing machine?

A. Well, it would be called a planing machine.

Q. Now, you were shown various samples here yesterday, which are included in Exhibits 2, 11, 8, 9, 13, and 10. Now, I assume that those are sections—what you would call sections—that is, off the ends of boards; is that so?

A. Yes, sir.

Q. About how long are those as you have them in your mill; how long is the board or piece from which those are cut?

A. We don't have them in our mill; we manufacture them.

Q. They are in the mill there after they are manufactured, aren't they?

A. Yes, sir.

117 Q. Then you do have them there?

A. Yes, sir.

Q. I want to get at the length of the board, or approximately.

A. From 8 to 16 feet.

Q. When they are in that condition, what are they known as in the trade or were they in 1894?

A. Manufactured base.

Q. Do you buy and sell anything as a manufactured base?

A. Yes, sir; I do.

Q. Bill it as a manufactured base?

A. I don't write the word manufactured base; I bill it as base.

Q. Do you talk about it as a manufactured base when you are making a sale?

A. To be sure I do.

Q. I want to know positively; do you talk about it in the trade as manufactured base?

A. Yes, sir.

Q. Is that a common expression?

A. It is, sir.

Q. Are there any other means or words which you apply to the article when you are talking about it in your trade?

A. Well, I don't exactly catch on to your question.

Q. I want to get at what is the full description that you use. Suppose a man comes to your factory—your mill—and wants to buy something of that sort, what is the full description which he expressed and you express?

A. I tell him I will take certain kinds of lumber and manufacture it into base for him—molded base—for so much money.

Q. You have not used the word manufactured yet.

A. Didn't I say manufactured?

Q. Your word manufacture in such a case refers to something which you would do; it does not refer to that thing, as I understand your answer. What I want to know is what you describe or talk about those different pieces?

A. I call that molded base; if you want me to leave out the word manufactured, molded base—molded casing.

Q. If you will be kind enough to answer my question—I think you can do it if you choose to—I want to know what you call such lumber as that when it is in the condition of those sections and in the full length, from 8 to 16 feet?

A. Molded base.

118 Q. In dealing in it?

A. Molded base.

Q. Then you do not call it manufactured molded base?

A. Well, it is manufactured.

Q. That is not the thing; I want to know what you call it—what you talk about. Do you or do you not call it molded—manufactured molded base?

A. I am liable to say manufactured molded base or I am liable to say molded base.

Q. I want to know what the fact is?

Mr. SPRATT. I submit that he has answered that.

A. I would not say I didn't; I would not say I didn't call it manufactured molded base, because I would be liable to say it.

Q. Will you frame your answer in any form you see fit?

A. I have framed it; I call it molded base.

Q. You have said it was all ready to be used, in your examination yesterday?

A. Yes, sir.

Q. I would like to ask you if, when a man who wants to use that—the carpenter or the builder—whether or not he can take those boards as you have them in that condition and use them without any labor upon them?

A. Well, I don't follow the lumber after it leaves our mill.

Q. You know how they are put on the building?

A. Yes, sir; I suppose he would have to nail it on.

Q. Wouldn't he have to do anything else?

A. Yes, sir; he would have to scrive it down on the floor, take a pair of compasses and mark it along so it fits the floor.

Q. Would he have to do anything else to it?

A. I suppose he would have to saw it off.

Q. When it comes to the corner of the room, what would he do—anything?

A. Sometimes they miter it and sometimes they cope it.

Q. I will ask you again whether you want to modify your answer, and if so, how, when you said that those pieces of board were all ready to be used?

A. They are all ready to be used.

119 Q. They are?

A. Yes, sir; just as much as I could describe it.

Q. At the same time, according to your testimony, the carpenter or builder who has to use them has to perform certain labor on it?

A. The same as a shingle; a shingle has to be nailed on.

Q. I want to know whether the carpenter does have to do the work which you describe or not after he gets these boards?

A. I expect he has to.

Q. Have you any doubt about it?

A. I think not.

Q. Do you consider yourself a manufacturer of lumber?

A. Yes, sir; I do.

Q. Well, according to your ideas, as an experienced man of thirty-odd years in the lumber business, what does the term manufacturer of lumber

or manufactured lumber include as applied to lumber? What do you mean by it?

A. Well, take the standing of timber in the woods, cut it down; I have done it; draw it to the mill, manufacture it into boards; then take the boards, rip them into sizes, if they are not the proper sizes.

Q. What do you mean by rip?

A. Saw them lengthways. Take that lumber and take it to a surfacer or a planer and matcher, flooring machine, manufacture it into flooring or ceiling cases—anything of that sort.

Q. Now, that is what you call manufactured lumber, is it, or manufacture of lumber?

A. Manufacture of lumber; yes, sir.

Q. Is it lumber all the time?

A. Well, lumber or wood, if you want to call it that.

Q. Which is it in the trade?

A. Lumber and wood is the same thing. I can not see any difference between wood and lumber.

Q. Would you call a cord of hard wood, or any sort of hard wood used in turning—would you call that lumber?

A. No; I don't know as I would.

Q. Then all wood is not lumber, is it?

A. No, sir; I don't think the word lumber covers all wood, either, when you come right down to the word lumber, the technical part of it.

120 Q. Then really your boards are manufactures of lumber, according to your understanding?

A. Yes, sir.

Q. And all the different processes are manufactures of lumber?

A. Yes, sir.

Q. But at the same time it is all lumber, isn't it—considered and treated as lumber?

A. Or lumber, manufacture of wood.

Q. Are these small exhibits known as lumber in that condition?

A. Well, I should call it lumber.

Q. What?

A. I should call it lumber. If I didn't have any lumber on the yard but lumber surfaced off on one side, I ——

Q. Should you call, of this stuff which is represented by these samples, I mean not in these small pieces, but in the regular pieces as found in your yard, or anybody's else in a like business, would you call that all lumber?

A. Yes, sir; I would call it manufactured lumber.

Q. Do you call it all lumber?

A. Well, I would call it lumber; it is manufactured lumber; that is what I would call it, manufactured lumber, if you come down to the technicality of the thing.

Q. Is it in the trade known as lumber?

A. It is known as lumber and as manufactured lumber—both.

Q. Known as lumber in 1894?

A. Yes, sir.

Q. Now, Mr. Maillard, may I ask you if you issue price lists or descriptions of the sort of lumber which you deal in or which you make?

A. Yes, sir.

Q. In those price lists you have different headings of what you do make?

A. Yes, sir.

Q. Will you state about what those headings are?

A. Those headings are flooring, ceiling, siding, casings, moldings, pickets, base, finishing lumber.

Q. It is all lumber, is it?

A. Yes, sir; cut up lumber, yes, sir; white wood.

Q. Do you deal in rough lumber?

A. Yes, sir.

Q. Dou you sell rough lumber?

A. Yes, sir.

121 Q. Do you or do you not frequently sell boards, rough boards, to be used just as they are, as you sell them?

A. Yes, sir.

Q. Then the fact of their being ready for use, does that have any effect in your mind, your judgment, in the trade, upon whether or not they are manufacturers of lumber or manufacturers of wood?

A. Well, lumber would be manufactured from logs; rough lumber manufactured from logs.

Q. You say that you do sell rough lumber, rough boards, that are all ready for use as you sell them?

A. Yes, sir.

Q. Now, I ask you if that fact that they are ready for use has any effect in your judgment as a lumber dealer, as an experienced man, upon the fact whether they are manufactures of lumber or manufactures of wood or anything of that sort?

A. I don't know as it has any effect at all, because I call both rough lumber or dressed lumber manufactured lumber.

Q. Or manufactures of wood?

A. Manufactures of wood, yes, sir; they are all manufactures of wood. At the same time rough lumber is rough; it has only gone through one process of manufacture.

Q. Referring to Exhibits number 2 to 8, which I understand you to have described as molded base, will you state what sort of machine is used in producing the irregularity there on the one edge?

A. Well, a molding machine manufactured it.

Q. How is that stuff bought and sold, on what basis?

A. It is generally—we sell some by board measure and we sell some lineal feet, according to the width.

Q. Which is the more general?

A. That is very narrow; when we call that a casing of a narrow piece of base, the general way is by the lineal feet, although we take and manufacture it by the board measure, the same way.

Q. So you really do sell it both by the lineal feet and also by the thousand rough board measure?

A. By the thousand feet measure, yes, sir.

122 Q. Rough board measure?

A. No; not in every instance.

Q. Well, in any instance?

A. Once in a while we take rough board measure and sometimes we do not.

Q. I show you Exhibits 5, 6, and 7; I would like to know what sort of machine that work is done upon?

A. That is done on a molding machine.

Q. Is it a molding or are they moldings, as you understood in the trade in 1894?

A. Well, that is a molded casing.

Q. Well, is it molding as you understand it in the trade?

A. Well, if you leave in the word casing you would not call that a molding.

Q. Be kind enough to leave out that "if" and answer my question. Was it in the trade in 1894 known as molding?

A. Well, you could call it molding and you could call it a molded casing.

Q. Was it or not in 1894 known as molding?

A. Well, it is known as both: I can not put it in any other way.

Q. How do you sell that?

A. By lineal feet.

Q. Do you ever sell it in the rough board measure?

A. No, sir.

Q. Now, Exhibit 13, on what machine was that prepared?

A. Well, that could be prepared on to a flooring machine; could be prepared——

Q. Well, was it?

A. I don't know; I can not tell.

Q. If you had such lumber, if you prepared such lumber, should you prepare it on a flooring machine?

A. Yes, sir; if I wanted to do real nice work, I would.

Q. Suppose you were not particular about it, what would you do it on?

A. I don't know but what I would do it on the molder.

Q. Could you do it on a planing machine?

A. No, sir; not a regular planing machine, not going through once.

Q. Is such work usually done on a flooring machine?

A. Yes, sir.

123 Q. How do you sell that?

A. Well, we sell some of that by the thousand feet and some by the lineal feet, according to the width.

Q. A thousand feet in the rough-board measure?

A. No, sir; not in the rough-board measure.

Q. Never?

A. Well, I won't say never, but I will say hardly ever.

Q. That sample represents a board $5\frac{3}{4}$ inches wide. Now, if you were selling that, would you sell that by the board measure of $5\frac{3}{4}$ inches wide?

A. That is altogether likely that is got out of a six-inch strip, but I don't sell six-inch strips; I would work that out in strips $6\frac{1}{4}$, $6\frac{1}{2}$; I lose the other half.

Q. Then you would sell that by the $5\frac{3}{4}$ measure?

A. I would sell it 6-inch measure. When we come so close as that we don't split on a quarter of an inch.

Q. What is 6 inch supposed to represent; the board in the rough condition?

A. You are asking me to suppose a thing; I don't suppose. I imagine that might have come out of a 6½-inch strip; I can't tell.

Q. Do you have an article which you recognize and talk about and deal in as moldings?

A. Yes, sir.

Q. How do you sell that?

A. I sell that by the lineal feet.

Q. Different widths?

A. Different widths.

Q. All by the lineal feet?

A. Most all by the lineal feet; occasionally there is an exception.

Q. How otherwise?

A. Generally by lineal feet.

Q. And when you don't sell it by lineal feet?

A. Well, we sell it by the board measure.

By Mr. GIBSON:

Q. You were speaking of the word lumber. You include in lumber, do you not, all timber that is not in the log?

A. Yes, sir.

Q. In all its forms after that, and when you speak of it in any general way you call it lumber?

A. Yes, sir; I call it timber; lumber.

124 Q. Yet there is a class name or a specific name for it, according to the purposes for which it is to be used, is there not?

A. Yes, sir.

Q. Take Exhibit 19 now; I read from this paper, Exhibit A, under the heading of car 53, specification, 1 car P. 1.S. & G. and butted exact lengths. Now, are those terms well known in the lumber trade, what they mean?

A. Yes, sir.

Q. What do they mean, in your understanding?

A. It means planed and matched.

Q. P. 1 S. & G. and beaded exact lengths?

A. Planed one side, and G. means grooved.

Q. Now, then, furtner it says T., under the column headed T; what does butted mean?

A. Butted means cut off to a length, so that it is all ready to lay down; that is what it means.

Q. In the column headed T. is 3; in the column headed W. is 8, and in the column headed L. is 10. What does that mean?

A. I don't exactly—let me see [examining Exhibit A]—that is the thickness, the 8 is the width, and the 10 feet is the length; thickness, width, and length.

Q. On that paper the thickness is the same, is it not; and the length and the width runs from 8 to 11 inches?

A. Yes, sir.

Q. Look at the piece of lumber shown you, marked "Exhibit 19," and state whether or not, in your judgement, that in any way resembles

the description of the lumber given in the paper which I have read to you.

A. All except the under side being surfaced off.

Q. That is prepared in the same way, then, except that that is planed on both sides instead of one?

A. Yes, sir.

Q. What is the width of that piece, about?

A. I should say that was manufactured from 11 inch.

Q. What would you call that; what would that piece of lumber be known as in the trade, say, if it was ten feet long?

A. I should call it roofing or flooring.

Q. Any particular kind of roofing or flooring?

A. I would call it factory roofing or flooring.

125 Q. Then, as I understand you to say, that sample there would represent this kind of lumber contained in this car, with the exception that it is planed on both sides instead of one?

A. Yes, sir; this is pine and that is spruce is the only difference.

Q. And the initial here, G., would represent that it was grooved as that is, would it?

A. Grooved; yes, sir.

Q. Well, would lumber described as this in a bill, P. 1 S. & G. and butted in exact lengths, be a description of lumber that would be prepared for some special purpose?

A. Yes, sir.

Q. From that description would you be able to say for what that lumber would be used?

A. I think so.

Q. What would it be used for, in your judgment?

A. That is used for roofing or flooring.

Q. You mean factory roofing or flooring?

A. Factory roofing or flooring.

Q. I call your attention to one other of these bills, part of Exhibit A, and dated June 24th, 1895, and shipped to F. H. Russell, Railway Avenue, New Haven. That is the same kind of stuff, is it not, the same kind of lumber?

A. Planed one side and grooved and beaded; yes, sir.

Q. That is car 22118?

A. Yes, sir.

Q. Now, that is described in the same way, is it not, except that the lumber there is all cut to the length of 16 feet and a half?

A. Yes, sir; 16 feet and a half.

Q. When you would see an invoice of lumber cut of this width, in this thickness, and to a precise length, would you know what use it would be for?

A. I would know it was fitted for a special purpose.

Q. Could the lumber, if it was so cut to this exact width and length and butted, be used for any purpose, any particular purpose, without any further process?

A. Yes, sir.

126 By Mr. TUCKER:

Q. Referring to Exhibit 19, I would ask you whether or not that grooving, without the tonguing, accomplishes to the user practically the same result as the tonguing and grooving—the same effect?

A. Yes, sir; I should judge so.

By Mr. GIBSON:

Q. What is the thickness, about, of that?

A. Well, it originally was three inches.

Q. A three-inch plank?

A. Yes, sir.

ARTHUR H. BREWER, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. What is your full name, please?

A. Arthur H. Brewer.

Q. Where is your place of business and what is your occupation?

A. I reside in Norwich, Conn.; occupation is a lumber and coal dealer.

Q. How long have you been in that business at that place?

A. Twenty-eight years.

Q. Were you ever in business in any other place?

A. In Boston some time before that, simply as a clerk.

Q. What business do you do in lumber?

A. Buy and sell.

Q. What kind of lumber?

A. All kinds that are used in an ordinary retail yard.

Q. How many thousand feet do you sell in a year.

A. In the neighborhood of five millions.

Q. To whom do you sell?

A. To factories, to carpenters, to farmers, to everybody.

Q. From whom do you buy?

A. Of the manufacturers in all sections of the country.

Q. You meet manufacturers of lumber and lumbermen from all over the country, do you?

A. Yes, sir.

Q. And you converse with them on the subject of lumber?

A. Yes, sir.

127 Q. State if you are familiar with the terms that are generally applied to the different classes of lumber.

A. I feel that I am.

Q. Are you familiar with the words dressed lumber as used in the lumber trade at the time of the passage of the tariff act of August 28th, 1894, and prior thereto and subsequent to this time?

A. Yes, sir.

Q. How was that term used, and what class of lumber did it designate?

A. The term dressed lumber to me always brings the picture in my mind of a board or plank planed on one or both sides.

Q. Will you examine Exhibit 1 there?

A. Yes, sir.

Q. Tell the Board by what name that would be known in the trade.

A. Spruce flooring—number one spruce flooring, judging from the quality of the piece, $\frac{1}{8}$.

Q. Was it known by that name at the time of the passage of the tariff act?

A. Yes, sir.

Q. Well, would you say that that has gone further than the process of dressing?

A. Yes, sir; it is dressed and matched, or dressed one side and matched would be the term that I should use.

Q. And it is suitable in the condition it is in for flooring?

A. Yes, sir.

Q. No other process would have to be used upon it except to cut it an exact length?

A. Well, we always order our flooring to be cut to the exact length, so that it can be used without any further labor on it; it is quite an important item, sometimes.

Q. If that were cut an exact length in that form it would be ready then for use without any further process?

A. Nothing but driving a nail through it.

Q. Has that lumber, in your judgment, gone beyond the process of being dressed lumber?

A. Yes, sir; for this reason: that the minute you go further than the mere planing of the sides of the lumber it becomes necessary to
128 be specific and tell just what you want done; that sometimes implies quite a long line of letters—abbreviations.

Q. You give orders for lumber to the manufacturers?

A. Yes, sir.

Q. If you wish to have flooring of that kind what sort of an order would you give?

A. I should be very specific in it, because we have to order it that way sometimes. That is a little different width from what we ordinarily handle. In giving an order for something which approximates that, I should say 1 by 4 flooring, dressed or planed one side and matched to $3\frac{1}{2}$ inch; then 12, 13, or 14 feet long, as the case might be.

Q. According to the length you wanted it to use?

A. Yes, sir.

Q. Do you have any machine for preparing lumber?

A. No, sir.

Q. I show you Exhibit 14; what would you call lumber in that condition? What was that known as August 28th, 1894, and prior thereto?

A. That is a board, planed one side, dressed one side.

Q. What would it be known to the trade as?

A. Well, that is—to speak of it in that way I should have to know more about the quality and that sort of thing to know specifically what it would be known to the trade. It is a dressed board—dressed lumber; there is no question about that at all; but, in speaking, usually we describe lumber more closely.

Q. Look at Exhibits 2, 8, 11, 10, 13, and 9; have you looked at those?

A. Yes, sir.

Q. Is that dressed lumber or manufactured lumber?

A. It is manufactured lumber; it has been dressed and manufactured further.

Q. Take Exhibit 2. What is that?

A. A piece of base or casing.

Q. Is that dressed lumber?

A. It is dressed and molded.

Q. Has that progressed beyond what you consider dressed lumber?

A. Yes, sir.

Q. And has become a manufacture of wood, has it?

A. I feel so.

129 Q. Look at that next piece of molding, Exhibit 8.

A. I don't call that a molding.

Q. What is that?

A. It is a molded base or casing.

Q. To what class does that belong?

A. It is dressed and molded.

Q. State if that, in your judgment, is manufactured lumber?

A. I consider that it is; it is fit for use without further work.

Mr. TUCKER. I want to interpose in here one objection which shall apply to all questions hereafter, against inquiring of any witness as to what is understood in the trade or what he understands by the term or words manufactures of lumber, for the reason that those questions are immaterial to the issue in this case, as there is no provision in the tariff law now in existence and operation for manufactures of lumber.

By the CHAIRMAN. The question here is whether this comes within the expressed category of dressed lumber or whether it is beyond it. It is immaterial what it is if it is not that, provided it is beyond.

By Mr. GIBSON:

Q. I call your attention to that casing there again, Exhibit 9.

A. Yes, sir; Exhibit 9 is a casing.

Q. What is that?

A. Molded casing.

Q. State to the Board whether that is a manufacture of wood or dressed lumber.

The CHAIRMAN. State to the Board what it is.

The WITNESS. It is molded casing.

Q. State if that has been advanced beyond dressed lumber.

A. It has been advanced beyond dressed lumber; it has been so worked that it can be used without any further work on it whatsoever, except paint and putty and driving a nail in it.

130 Q. Take Exhibit 10; what is that?

A. That is a molded casing—lumber which has been worked for a specific purpose in a specific way.

Q. Has that been advanced beyond dressed lumber?

A. It has.

Q. Take Exhibit 11; what is that?

A. Well, that is also a molded casing, much simpler in pattern.

Q. Is that advanced beyond what is known in the trade as dressed lumber in August, 1894?

A. Yes, sir; it would be necessary to describe that as dressed and beaded or molded.

Q. State if that could be used for a particular purpose without any further work.

A. It can.

Q. Take Exhibit 12; what is that?

A. That is a baseboard—a corner baseboard.

Q. Is that ready for use?

A. It is.

Q. Has that advanced beyond what was known to the trade as dressed lumber in August, 1894?

A. Yes, sir.

Q. Now, take Exhibit 15; what is that?

A. From the character of the lumber I should term it, personally, verandah flooring, it being white pine, usually used for that purpose.

Q. Will you state about its thickness?

A. 1⅛ inches.

Q. Its width?

A. Evidently made from a four-inch strip.

Q. Please state what has been done to that lumber.

A. That has been planed both sides and matched; dressed both sides and matched.

Q. Has that been advanced beyond what was known to the trade in August, 1894, beyond dressed lumber?

A. Yes, sir; it has been advanced beyond dressed lumber, because it requires more to describe it; the word dressed only implies planing.

Q. In its present condition is it fitted for any particular use?

A. Fitted for flooring.

Q. Would it be in the same way if it was only dressed on one side?

A. Yes, sir.

131 Q. Take Exhibit 16. What is that known to the trade as?

A. I should call that half by six C. B. pine ceiling.

Q. State what has been done to that.

A. It has been dressed one side, matched, beaded, and center beaded.

Q. Has that been advanced beyond what was known to the lumber trade in August, 1894, as dressed lumber?

A. Yes, sir; if I were ordering, for instance, half-inch boards, I would order them dressed. That would mean planed, ordinarily both sides. But in ordering this I would have to say planed both sides, matched, beaded, and center beaded.

Q. I call your attention to Exhibit 19. Can you state what that is?

A. Factory flooring or roofing, grooved for spline. It would have to be so described.

Q. Please give a description of that as to size and what has been done to it.

A. Well, that would be described as 3 by 11, with the length wanted, and ordered planed both sides and grooved for spline, and a description of the size of the spline would ordinarily accompany it.

Q. State if that has been advanced beyond what is known as dressed lumber in the lumber trade in August, 1894, and prior and subsequent thereto.

A. Yes, sir.

Q. If that had been ordered for a certain length, would it be then prepared for use?

A. Yes, sir; ordinarily it would be ordered worked in such a way and butted to such a length.

Q. What is the meaning of the word butted?

A. Sawed off at the mill by a crosscut saw; sawed off square, so it can be used without any further labor on the part of the mechanic laying it.

Q. Would lumber of those dimensions, butted and cut to an exact length, be beyond what was known in the trade as dressed lumber?

A. Yes, sir.

132 By Mr. TUCKER:

Q. You have said that you are in the lumber and coal business in Norwich, Conn.?

A. Yes, sir.

Q. And sell about five million feet of lumber a year?

A. Yes, sir.

Q. As I understand, you are not engaged in any mill or have no manufacturing place at all?

A. Yes, sir.

Q. You simply buy and sell lumber?

A. Yes, sir.

Q. You have been referred to Exhibit 1, and you say it is spruce flooring?

A. Yes, sir; number 1 spruce flooring would be my description.

Q. Supposing you were given a written order for flooring of that sort, what would you say in that order in order to get it?

A. Please ship me a carload of 1 by 4, and give the length wanted, number 1 spruce flooring, dressed one side and matched.

Q. Now, supposing you didn't want it matched, what would you say?

A. I should order it worked in the way that I did want it.

Q. That is hardly responsive to my question.

A. I mean to answer it properly, sir.

Q. I ask you, supposing you did not want it matched, what would you say in your order?

A. You mean if I wanted it simply with this surface smooth?

Q. Just as it is except that you didn't want it matched.

A. I should order it dressed on two sides.

Q. Then, as I understand you, you would describe the condition in which you wanted the lumber. Is that so?

A. I should in that particular class of lumber; yes, sir.

Q. Would you, in regard to any and all of this lumber to which your attention has been called?

A. I would, to all of this lumber to which my attention has been called; yes, sir.

Q. Was all of this stuff represented by these samples known and considered in 1894 in the trade as lumber in the ordinary lengths.

A. Yes, sir.

133 Q. Now, would the term as you understand it, dressed lumber, in 1894, in the trade, have included that number one as well as these other numbers—would the term dressed lumber, as you understood it in the trade as lumber dressed, in 1894, have included all these various sorts, including that number one?

A. All of this lumber is dressed and something more.

Q. Then it is all within the term dressed lumber, isn't it?

A. Any piece of lumber that I have ever seen used anywhere is dressed lumber, except in a rough barn; in a table, even, it is dressed lumber; it has to be dressed first and then something else done.

By Mr. SPRATT:

Q. When that lumber is changed in the condition in which it is now before you, what would be the correct designation to apply to it?

A. Each one would have a different term, but it would all—practically all of that, with the exception of that Exhibit 14—all of it with that exception is made for a specific purpose, and is manufactured into that for some specific purpose, and would be known by some specific name.

Q. And has all of it been advanced beyond what was known as dressed lumber in the trade in 1894?

A. Yes, sir.

By General Appraiser WILKINSON:

Q. Do you mean that the terms dressed lumber and planed lumber are synonymous?

A. Yes, sir.

Q. And that the terms dressed lumber and planed lumber do not embrace matching and beading?

A. No, sir; there are grades of lumber which I order, simply using the word dressed and nothing more than the response on the part of the dealer; he never asks questions; he ships it.

By Mr. SPRATT:

Q. What would he ship?

134 A. If I was ordering a grade 1 by 8 hemlock, dressed, it would come to me planed one side, without any ayes, ifs, or ands. If I wanted it further done, I should have to specify it.

By Mr. TUCKER:

Q. Did you ever give such an order as that last described?

A. Very frequently. I gave an inquiry for ten cars the other day.

Q. What is this hemlock lumber?

A. Hemlock boards, 6, 8, 10, 12 inches wide, used under clapboards or under shingles.

Q. Is it generally used simply being planed on one side?

A. Yes, sir.

Q. So generally that that is the rule?

A. It is quite frequently used matched, but generally used planed on one side, described as dressed hemlock.

EUGENE B. ABBOTT, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Eugene B. Abbott.

Q. Where is your place of residence?

A. Boston.

Q. And your business?

A. Lumber business.

Q. Are you a member of a firm engaged in the lumber business?
A. Yes, sir.
Q. What is the firm?
A.
Q. How long in business?
A. For twenty years.
Q. What sorts of lumber do you deal in?
A. In all kinds of lumber.
Q. Are you engaged or interested in any lumber mill where lumber is manufactured?
A. No, sir.
Q. You are buyers and sellers of lumber, are you?
A. Yes, sir.
Q. Do you buy and sell rough lumber?
A. Yes, sir.
Q. Do you buy and sell what is known in the trade as dressed lumber?
A. Yes, sir.
135 Q. Will you describe what you understand was known in the lumber trade in 1894 as included in the phrase dressed lumber?
A. Lumber that was dressed on one or two sides or dressed and matched; dressed, matched, and beaded is what we considered dressed lumber in 1894.
Q. Matched is the equivalent to tonguing and grooving?
A. Yes, sir; and dressed and jointed.
Q. Does it make any difference whether that lumber is 1 or 2 or 3 inches thick?
A. No, sir.
Q. Will you look at that Exhibit 1, and state whether or not, as you understand it, in the trade in 1894, lumber of that sort and in that condition, various lengths, running above ten feet, would be considered as within the term dressed lumber?
A. It would.
Q. Do you order or buy lumber from the mill men or people who manufacture lumber?
A. We do, sir.
Q. Supposing you gave an order for spruce plank three inches thick, six inches wide, planed and tongued and grooved, or grooved alone, and cut to some special length, 18 feet, 16 feet, whatever it might be, would or would not lumber of that sort, as you understand it in the trade, be included in 1894 within the term dressed lumber?
A. It would with us.
Q. In your business, dealing in lumber, both rough and dressed, do you classify it off into different classes; that is, do you have a class that you call box wood or box boards, and a class you call finished, and a class you call this and a class you call that—different names?
A. We do in pine lumber.
Q. Are those names applicable to the lumber, whether it is in the rough condition or the dressed condition, as you have described it?
A. Yes, sir.
Q. Supposing you called it or it was called flooring—any of this lumber was called flooring or sheathing or shelving, or any of such names,

or roofing—would those words or descriptions change in any way
136 the fact, which you have testified to, that the term dressed lumber included all these things?

A. I don't get your question exactly.

Q. (Repeated.) Supposing you called it or it was called flooring—any of this lumber was called flooring, sheathing, or shelving, or any of such names, or roofing—would those words or descriptions change in any way the fact, which you have testified to, that the term dressed lumber included all these things?

A. No, sir; it would waive the fact, as I understand it, that it is dressed lumber.

Q. What is the extent of your business per annum in feet?

A. Twenty-five to thirty millions a year.

Q. To what class of people do you sell lumber?

A. To the retail lumber yards, large manufacturers.

Q. In buying and selling lumber in the condition of that Exhibit 1, or such a one as I have supposed of thick lumber, how is it described in the invoices or bills?

A. That would be described as 1 by 4, I think, spruce, planed and matched.

Q. Anything about its being flooring?

A. No, sir.

Q. Any dimensions given to it?

A. We would call it 1 by 4, spruce, planed and matched.

Q. How would it be about the thicker, which I have described here?

A. I should bill it as three-inch pine plank, planed and grooved.

Q. How do you buy and sell it; that is, how is the measurement arrived at?

A. By the thousand feet in the rough, before it is dressed.

By Mr. GIBSON:

Q. Have you not ordered a car of lumber from Mr. Crane, of Burlington, during the last months—the last four months—sheathing, cut 8 and 9, planed, tongued, and matched, and called it car sheathing?

A. I don't know what I called it, but I ordered a car of that kind for car sheathing.

Q. You ordered it?

A. Yes, sir.

Q. Is not such lumber as that Exhibit 1 known in the trade as flooring?

A. It is not with us.

137 Q. I am asking you about the trade generally as flooring?

A. Well, I only know New England trade; I don't know the trade outside.

Q. That is used for the purpose of flooring?

A. They use it for flooring; they use it for other purposes.

Q. That would ordinarily be used for flooring, would it not?

A. Used for flooring, used for sheathing.

Q. So far as that is prepared it is prepared for either, isn't it?

A. Yes, sir.

Q. The only other thing to be done to it to prepare it for use would be to cut it to the proper length, would it not?

A. Yes, sir.

Q. I show you Exhibit 17. If you were to order that how would you order it?

A. We never order it; we don't use it in our country.

Q. But suppose you should?

A. I cannot; I don't know as I ever have.

Q. If it was known in the trade as siding?

A. If it were known as such I should, but we don't use it in Boston at all.

(Objected to by counsel for protestant.)

GEORGE W. HOTCHKISS, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. George W. Hotchkiss.

Q. Where is your residence?

A. My place of business, Chicago; my residence, Evanston, a suburb of Chicago.

Q. What is your business?

A. My present business is lumber historian.

Q. Do you know anything about the business of buying and selling lumber or the preparation of lumber?

A. I have been connected with the lumber business since 1847 as a buyer and seller, retailer, wholesaler, manufacturer, and during
138 the period of six years, from 1881 to 1887, secretary to the Lumbermen's Exchange of Chicago, and from 1870 to a greater or less extent a recognized writer and expert upon lumber matters.

Q. During the year 1894 were you, from your association or the business which you have defined in your testimony, were you acquainted with the trade understanding or the general understanding in the lumber business of terms used as applied to lumber?

A. I think so.

Q. Did you understand what rough lumber was in 1894?

A. Yes, sir.

Q. Did you understand what dressed lumber was?

A. Yes, sir.

Q. Was there such a term as dressed lumber?

A. Yes, sir.

Q. Do you understand what it referred to?

A. It referred to that product of lumber which had passed through a planing mill and been to a greater or less extent prepared for use.

Q. If you will, define a little more particularly the different stages of preparation.

A. Dressed lumber is subdivided into very many subdivisions. There is the surfaced, which includes that which has simply been passed through the planer and one side planed; there is the surfaced two sides, where two sides have been planed; there is the surfaced four sides, where the two sides and the two edges have been planed. Then there is the flooring, which includes the surfacing one side or both, for in the present custom there is a great deal of it caved, but it includes a piece of lumber

which has been passed through and surfaced, and instead of a square knife a knife on one side for tonguing and another on the other for grooving, making what is known in the trade as flooring.

Q. Does the term, or did it in 1894, as you understand it in the trade, the term dressed lumber include all such lumber as you have last described?

A. It did.

Q. Do you know how such lumber was bought and sold in 1894—what sort of measurement?

139 A. Yes, sir; I may say customs vary in different parts of the country. There are localities where it is measured by the original width in the rough; there are other localities where the price is made upon the basis of what it will lay, the neat lumber, the dressed measurement. The general rule throughout the country would be the measurement in the rough; that is, a six-inch strip which has been grooved and tongued and has lost some of its width would be measured six. It is calculated upon the width of the original rough strip.

Q. Does what you have said in reference to the piece which you have in your hand—does that apply to thick lumber which is two or three inches thick?

A. When you come to go above the ordinary flooring, or ordinary ceiling, and thinner designations, it is generally ordered by plank. On leaving the thickness of one inch we strike the designation of plank. In ordering anything thicker than an inch the thickness would be specified, an inch and a quarter, or whatever it might be, and the extent of the dressing, because as a rule those different thicknesses are simply adapted to one particular use and are ordered according to the use for which they are designed and desired.

Q. Did the term in 1894, as you understand it, dressed lumber, include all these?

A. It did.

Q. Looking at Exhibit 1 there, which you hold in your hand, will you state whether or not, in the year 1894, as you understood it in the lumber trade, the term dressed lumber would have been understood in the trade as that subdivision of dressed lumber known as flooring?

Q. Were there in the trade in 1894 other subdivisions of dressed lumber, as you understood it?

A. Almost illimitable, according to the uses to which lumber could be put.

Q. Was it all lumber?

A. All lumber.

Q. And all within the term dressed lumber?

A. All within the term of dressed lumber, subject to the term specifying that subdivision.

140 Q. Can you name a half dozen of them?

A. Flooring, sheathing, ceiling, drop siding.

Q. In the rough-lumber trade are there similar subdivisions?

A. In many departments of it. For instance, a six-inch strip as a flooring strip, or a four-inch strip as a four-inch flooring strip, or a strip of lumber six or eight inches wide may be termed a rough base, and on being passed through the machine it simply has added to it d. and m.

By General Appraiser WILKINSON:

Q. How about rafters and joists?

A. They are sometimes sized; they are seldom planed, seldom dressed.

Q. They are used that way, in the rough?

A. Used that way, in the rough; but in our Western custom, in order to save freight, there are very few rough boards shipped, for the reason that there is a saving of freight to almost every point more than equivalent to the cost of dressing.

By Mr. GIBSON:

Q. Will you tell us what you consider the simplest manufactured article made of wood?

A. The simplest manufacture would be the first manufacture of the planing mill in its origin.

Q. I am speaking about an article?

A. Well, I hardly know of anything that comes from the planing mill which is a finished article.

Q. Would you consider a plain pine box, made of boards that were planed on both sides, say three feet square—would you consider that box a manufacture of wood?

A. That is, when it is nailed together, you mean?

Q. When it is a box?

A. When it is a box it will be a manufacture of wood.

Q. The boards would have to be prepared for that box first, would they not?

A. They would.

Q. They would have to be cut into certain lengths?

A. Yes, sir.

Q. And sizes?

A. Yes, sir.

141 Q. After those boards which had been planed, say, on both sides and had been cut to a certain length, with the intention of making a box of them, and nothing to be done except to put them together, would you consider that those boards had passed beyond dressed lumber?

A. No, sir; I should not, unless they were put up in a package in the shape of box shooks; but if they are thrown into a promiscuous pile, would be of no more value than any other débris of lumber.

Q. If they had been put into parcels, cut into the same form as laying in the pile, and the same length, you would consider that they had passed beyond the designation of dressed lumber?

A. No, sir; they would be still dressed lumber, but would come under a designation of box shooks, adapted to box shooks, but equally adapted to any other use to which the size would apply.

Q. Suppose these pieces of boards, cut in this way, bunched together as you say, sides and ends, and designated for boxes, would you then consider that they had passed beyond the limit of dressed lumber?

A. Provided they were cut into shape—that is, made into packages, where they could be taken and put together as a complete box; but if thrown promiscuously together, I should say no.

Q. Then you would consider them beyond the category of dressed lumber, would you?

A. Yes, sir; I should take them then into box shooks.

Q. Suppose that planks had been cut three inches thick, eight inches wide, and butted and cut in exact lengths and intended for flooring for a particular place and a particular purpose, tongued and grooved, would you consider that planks such as I have described had passed beyond the grade of dressed lumber?

A. I should not, for the reason——

Q. One moment. Will you give a distinction, then, in your own language, now, why you would designate pieces of wood such as you have described—make a distinction between that and lumber that had
142 been cut to a certain length and beaded—had been planed on one side and grooved and sized up and intended for a floor or roofing in a certain factory—tell us why in one case you would consider it a manufacture of lumber and in the other you would not.

A. Because in the one case your material has nothing to be done to it except assembling and nailing together. In the other piece, I have yet to see a piece got out just as you have described it, which was adapted to the use for which it was provided without some further manufacture, as for instance, if got out for flooring, a question whether it was got out for 14 or 16 inch centers or joists, whether it will fit without the squaring of ends just as it is. Very seldom you will see a piece of lumber from the planing mill or saw mill with a perfectly square end. It has to be squared, cut off, fitted in the length, fitted in the square for the position to which it is to be applied, and I don't consider a thing manufactured until it is so fully manufactured as to require no more hand work.

Q. That, then, is the distinction you make between dressed lumber and a manufacture of wood, is it?

A. Yes, sir.

Q. Suppose those things you have stated had been done to such planks as I have described to you, would you then consider such planks a manufacture of wood?

A. It is hardly a possibility to understand such a condition of things.

Q. If it did exist in regard to such planks as I have described to you, would you consider it a manufacture of wood?

A. All preparations of lumber are a manufacture of wood in a certain sense.

Q. Answer my question, yes or no?

A. All lumber, after it leaves the log and is passed through the saw mill, has become a manufacture of wood.

Q. Designated for a particular building?

A. When designated for a particular building and laid in that building, it becomes then flooring, be the thickness what it may; it is
143 a dressed floor. I don't consider a thing manufactured until it is completely manufactured, and a floor is not completely manufactured until it is laid down, and not always then.

Q. Did you ever see any such flooring as I have described?

A. No; I don't think I ever did.

Q. Did you ever deal in any?

A. I have never dealt in that article so perfect as you describe it; I have never seen any that didn't require manipulation before it filled the purpose for which it was intended.

Q. Did you ever see a factory constructed where such lumber as I described was used?

A. No, sir; not where it was used as it came from the machines.

Q. Then you have no practical knowledge on that subject?

A. I think I have, for I have seen the construction of a great many buildings.

Q. And three-inch flooring, as I have described?

A. Your question, as I understand it, assumes that it leaves the machine in the condition you speak of.

Q. I said three-inch factory flooring as you see before you there.

A. Yes, sir.

Q. Did you ever see any of it?

A. Yes, sir.

Q. Did you ever see any of it laid?

A. Yes, sir.

Q. What is it known as?

A. As flooring; as three-inch plank flooring is what it is. It differs from ordinary flooring in that it is raretted and has a separate tongue, instead of being tongued and grooved.

Q. Now, listen to this question: Suppose a plank three inches thick, ten inches wide, cut to a specific and exact length, and tongued and grooved and planed on one or both sides, and ordered by a person who was erecting a building from a manufacturer of lumber and intended to be used in that building, being laid down as a floor in a factory or as roofing, and that lumber was so prepared and so used when it was
144 recovered, nothing more to be done to it when received except to be laid down, all the lengths being exact, would you consider, or would you say, that that lumber had not passed beyond being dressed lumber?

A. No, sir; that is to say, I would say that it was still dressed lumber. Don't misunderstand the meaning of that word. No, sir.

By the CHAIRMAN:

Q. He asked you if you would consider that it had passed beyond the condition of dressed lumber.

A. No, sir; it has not passed beyond the condition.

Q. In other words, if it was something more?

A. No, sir; it was nothing more than dressed lumber.

By General Appraiser SHARRETTS:

Q. Up to the passage of the act of 1894, in trade usage, have you ever heard the words dressed lumber at all?

A. Always; from 1847 I have known nothing else except the expression of dressed lumber, with its various subdivisions of flooring, ceiling, molding, siding, etc. It has all gone under the designation of dressed lumber.

LEROY CLARK, called as a witness, and being first duly sworn, testifies as follows:

By Mr. TUCKER:

Q. What is your full name?

A. Leroy Clark.

Q. What is your business?
A. Lumber business.
Q. Where?
A. Foot of West Thirtieth street, New York.
Q. How long have you been engaged in the business?
A. Since 1851.
Q. Do you deal in various kinds of lumber?
A. Yes, sir.
Q. Rough lumber?
A. Yes, sir.
Q. Is there such a thing as dressed lumber in the trade?
A. Yes, sir.
Q. Do you deal in dressed lumber?
A. Yes, sir.
145 Q. The various sorts of dressed lumber—pine, spruce, hemlock, &c., &c.?
A. Yes, sir.
Q. Will you describe what, as you understand it or did in 1894, in the lumber trade, was understood to be included within the term dressed lumber?
A. Well, I understand that all lumber is dressed that is dressed in any shape.
Q. State what you mean by dressed in any shape.
A. Dressed for flooring, or sheathing, or siding, or shelving, or anything of that kind.
Q. What does the word dressed mean?
A. To be planed.
Q. Does it mean to be grooved, or mean to be tongued?
A. Yes, sir; it means either way.
Q. Examine Exhibit 1, and state what, in 1894—what sort of lumber that would be considered in the trade; dressed lumber or rough lumber, or if not either?
A. It is dressed lumber.
Q. How would it be bought and sold, or how was it bought and sold at that time?
A. As dressed lumber.
Q. By what sort of measurement?
A. Measured in the rough before it was dressed.
Q. By the thousand feet?
A. Yes, sir.
Q. What is the extent of your business, Mr. Clark—I mean in thousand feet?
A. We handle five to eight million a year.
Q. You sell to carpenters and builders, &c.?
A. Yes, sir.

By General Appraiser SHARRETTS:

Q. In your opinion, would the term dressed lumber cover that article, or would it have to be described as lumber dressed and tongued and grooved?

A. I consider that as dressed lumber. It would not have to be described as dressed any particular way; there is a thousand ways to dress it.

Q. The term dressed lumber, in your opinion, would cover it in that condition?

A. I should think so.

146 By the CHAIRMAN:

Q. Not advanced beyond the condition of lumber known to the trade as dressed lumber?

A. No, sir. We have lumber shipped from certain points. Sometimes we can get it dressed cheaper than we can rough. Lumber from California is from five to ten dollars a thousand less dressed than rough. Some points West it is cheaper to buy it dressed than it is rough. They give us quotations dressed in any way that we want it.

By Mr. GIBSON:

Q. Suppose you gave an order West just for dressed lumber and nothing else, what would you get back?

A. We would not give such an order.

Q. What would you give?

A. An order for what we wanted.

Q. What would you give if you wanted Exhibit 1?

A. Dressed flooring.

Q. Tongued and grooved?

A. Tongued and grooved and dressed on one side.

Q. What is that used for in its present state?

A. Flooring. It could be used for ceiling.

Q. Ordinarily flooring?

A. Yes, sir.

Q. The only thing need to be done to that to make a flooring of it would be to butt it the exact length and lay it down?

A. Yes, sir; it is ready to go on the floor as it is.

Q. When that was in the floor and composed the floor, you would call it then dressed lumber?

A. Yes, sir.

Q. It would never change?

A. After it is once dressed it can not be put back in the rough state.

Q. You say that it is all ready to make a floor?

A. Yes, sir.

Q. The only thing necessary to be done is for the carpenter to lay it down and drive a nail in it?

A. Yes, sir; he puts it down and planes it afterwards.

Q. That is simply to even it up?

A. Yes, sir.

147 Q. When it was in the floor, when that had been done to it, it would still be dressed lumber?

A. Yes, sir; it would be dressed lumber before it was planed off; it wouldn't make any difference—that wouldn't.

FRANK DUDLEY, recalled.

By Mr. TUCKER:

Q. Various samples of lumber are now offered on the part of the protestant in this case, as illustrative of the different conditions of lumber which are dealt in by the protestant. I will ask you to specify each one, in order that the stenographer may indicate or mark it as an exhibit.

Mr. GIBSON. I object to any illustrative samples going in, except those which are specified in the protest or in these bills in Exhibit A, which are three kinds; that is, planks that are three inches thick and planed on one side and grooved, and spruce flooring from four to five inches wide and one inch thick, and planks two inches thick, which constitute the only lumber that is included in the protest or in the invoices.

(Objection overruled. Exception.)

A. This [producing sample] is 1 by 3, planed one side.

(Same marked in evidence "Exhibit 21, 27625–B, July 25th, 1895.")

This [producing sample] is 1 by 4, planed two sides and matched.

(Same marked in evidence "Exhibit 22, 27625–B, July 25th, 1895.")

This [producing sample] is 1 by 5, planed two sides, matched or tongued and grooved.

(Same marked in evidence "Exhibit 23, 27625–B, July 25th, 1895.")

148 This [producing sample] is 1 by 5, planed one side and jointed.

(Same marked in evidence "Exhibit 24, 27625–B, July 25th, 1895.")

All the preceding are spruce. This [producing sample] is 1 by 5, white pine, planed two sides and jointed.

(Same marked in evidence "Exhibit 25, 27625–B, July 25th, 1895.")

This [producing sample] is 1 by 8, white pine, planed two sides.

(Same marked in evidence "Exhibit 26, 27625–B, July 25th, 1895.")

This [producing sample] is 1 by 4, spruce, planed two sides, matched, and beaded two sides.

(Same marked in evidence "Exhibit 27, 27625–B, July 25th, 1895.")

This [producing sample] is 3 by 8, spruce, planed one side and grooved and beaded.

(Same marked in evidence "Exhibit 28, 27625–B, July 25th, 1895.")

This [producing sample] is 3 by 6, spruce, planed one side and grooved.

(Same marked in evidence "Exhibit 29, 27625–B, July 25th, 1895.")

Mr. TUCKER. I offer in evidence, on the part of the protestant, a letter from himself to Mr. H. E. Wellman, of Providence, Rhode Island, dated July 16th, 1895, and Mr. Wellman's reply thereto, dated July 22nd, 1895, which letters I have offered in evidence in this case, for the reason that Mr. Wellman is physically unable to go anywhere except that he is carried, being paralyzed in both limbs.

(Objected to as inadmissible. Objection sustained and letter excluded. Exception by protestant's counsel.)

149 WILLIAM L. PROCTOR, called as a witness, and being first duly sworn, testifies as follows:

By Mr. SPRATT:

Q. Where do you live?

A. Ogdensburgh, New York.

Q. What is your business?

A. General manager of Skillings, Whitney and Barnes Lumber Company.

Q. In what is that corporation engaged?

A. In timber; dealers in timber, lumber, and manufacturers of wood.

Q. How long have they been engaged in that business?

A. Since 1856.

Q. How long have you been connected with the business?

A. Since 1857.

Q. About how much lumber have you been in the habit of handling yearly?

A. You mean the last few years?

Q. Yes, sir; say, for the last five years.

A. It runs from one hundred and twenty-five to one hundred and fifty millions feet.

Q. Do you buy the lumber?

A. Yes, sir.

Q. And you manufacture quantities of it yourself, in your mills?

A. No, sir.

Q. What do you do with the lumber in your mills?

A. We plane it.

Q. At Ogdensburgh?

A. We plane it and saw it, cut it up in various shapes.

Q. Were you familiar with what is known to the trade in August, 1894, and for many years prior thereto, as dressed lumber?

A. I think so.

Q. What was dressed lumber, as known to you in the trade in 1894 and for years prior thereto?

A. Lumber surfaced one or two sides.

Q. When lumber was changed by further working or process, how did it affect it with reference to being dressed or undressed lumber?

A. I don't quite understand that.

Q. When lumber was changed beyond planing it on one or two sides, what effect did it have with respect to its being denominated dressed lumber or otherwise?

A. It became manufactured—a manufactured article.

Q. Did it cease to be known as dressed lumber?

A. I think so.

Q. I call your attention to Exhibit 2. Is that dressed lumber?

(Objected to by counsel for the protestant as immaterial.)

Q. Is that what was known as dressed lumber to the trade prior to August, 1894?

The CHAIRMAN. The Board is of the opinion that the questions to the witness should be directed more particularly to those samples showing the particular merchandise.

Mr. SPRATT. For the time being I will withdraw the question and ask another one.

Q. Examine Exhibit 1, Mr. Proctor. Was that known to the trade in 1894, and prior thereto, as dressed lumber?

A. I should say not.

Q. What was it?

A. It was known as spruce flooring.

Q. When lumber went beyond planing on one or both sides, in 1894 and prior thereto, was its character changed from what was known to the trade as dressed lumber?

A. I think so.

Q. Was it changed in many ways?

A. Yes, sir.

Q. By different machinery?

A. Yes, sir.

Q. What machine was used for the dressing of lumber?

A. Well, we used to use what was known as the old Farrar machine; it was an endless bed machine that simply planed one side or two sides.

Q. When lumber is manufactured—when wood is put into different manufactures—do you have different machines to make different varieties of wood manufacture?

A. Yes, sir.

Q. Do those machines vary in cost?

A. Yes, sir.

Q. According to the work that is done with them?

A. Yes, sir.

151 Q. Does the manufacture of different styles of wood vary in their cost?

A. Yes, sir.

Q. According to the amount of manufacture which is done upon the work?

A. Yes, sir.

Q. In dressing lumber, the simplest kind of work that is done upon boards of lumber?

A. Yes, sir.

Q. When it is changed into siding, more work is required upon it?

A. Yes, sir.

Q. When it is changed into molding, more work is required upon it?

A. Yes, sir.

Q. And different kinds of machines from simple planer?

A. Yes, sir.

Q. And so on with the various kinds of manufacturing to which wood is put?

A. Yes, sir.

Q. Take the same there known as Exhibit 19. What was that known to the trade as in 1894 and prior thereto?

A. Known as factory flooring.

Q. In its present condition has it gone beyond the stage of dressed lumber as known to the trade in 1894 and prior thereto?

A. I think it has.

Q. What has it become?

A. It has become a flooring, a factory flooring.

Q. Manufactured for a special purpose?

A. Yes, sir.

Q. Is it a manufactured article?

A. Yes, sir.

Q. Take Exhibit 15. I call your attention to that. Was that known to the trade in 1894 and prior thereto as dressed lumber?

A. No, sir.

Q. What was it known to the trade in 1894 and for many years prior thereto?

A. Inch and a quarter piazza flooring.

Q. What is that worth, say a thousand feet, delivered in car-load lots?

A. At present?

Q. Yes, in New York or in New England.

A. Thirty-four or thirty-five dollars.

Q. What kind of lumber would you send into the mill to make that flooring?

A. Well, I could hardly answer that question. If it was flooring, we would have to have it free from sap and try to get the hard stuff
152 in lumber. We rip it up, in the first place, to the proper width, so as not to have any sap, which will decay.

Q. How do you measure that as goes out to your customers?

A. Our custom is, we measure the face, and then we add half an inch to it for the working.

Q. What becomes of the waste, for instance, when you are sawing up wood to put it into that kind of flooring, and it is imperfect?

A. Well, if the waste is suitable for anything, boxes or anything of that kind, we use it; if not, it goes into the wood pile.

Q. So that it is lost to you? What would you sell the rough lumber for out of which that is manufactured in New York and New England?

A. Probably twenty-eight, thirty dollars.

By Mr. TUCKER:

Q. As I understand you, you have mills somewhere; I don't remember where you said?

A. Ogdensburgh, New York.

Q. What company?

A. The Skillings, Whitney & Barnes Lumber Company.

Q. Is that a corporation?

A. Yes, sir.

Q. Has it a business in different localities? Does it have offices or places of business in different localities?

A. Yes, sir.

Q. Pretty extensive affair, isn't it?

A. Oh, quite a little concern.

Q. You testified that the operations were pretty large; that is, that you handled a good deal of lumber?

A. I testified about what we do.

Q. It is of a good deal of importance to your company whether or not this sort of Canadian lumber comes in here free or not?

A. Some.

Q. Some? Isn't it a good deal?

A. Yes, sir.

Q. Isn't it of very serious importance?

A. Oh, I don't know about that.

Q. But it is of a good deal of importance?

A. Oh, yes, sir.

153 Q. Look at Exhibit No. 1 there, and state whether or not in 1894, as you understood it in the trade, lumber in that condition would be included within the term dressed lumber.

A. I think not.

Q. I am not asking for an opinion; if you please, I would like to have a positive answer, if you are able to give it?

A. I say not.

Q. Is the term dressed lumber of frequent use by operators in lumber in their operations, making bills, and orders?

A. Yes, sir.

Q. Is it used alone, those two words used alone, or are they used in connection with certain figures or letters of description?

A. Both ways.

Q. Used alone sometimes?

A. Yes, sir.

Q. And sometimes with figures or letters of description?

A. Yes, sir.

Q. Will you state to us some of the letters or descriptions which are used in connection with the term dressed lumber?

A. Well, they sometimes use D.

Q. What does that mean?

A. That means dressed.

Q. Dressed how?

A. Dressed one side.

Q. Is it simply D. or D. 1 S., or is it dressed 1 S.?

A. I have seen it both ways.

Q. Frequently used D. 1 S., isn't it?

A. Yes, sir.

Q. When you wanted it dressed two sides, what?

A. I should say so.

Q. Supposing you wanted anything else done to it, what would you say?

A. I should say what I wanted done.

Q. Do you or do you not have frequent orders for lumber where it is described in the invoice as so much lumber as of certain dimensions, D. 1 S., D. 1 S., T. & G., &c.?

A. Yes, sir.

Q. Frequently have those orders?

A. Yes, sir.

Q. What do you understand from orders of that sort?

A. I understand, if the word D. is used——

Q. It means what?

A. Dressed one side; if it is D. 2, dressed two sides; if it is D. 1 S., T. & G., it means dressed one side, tongued and grooved.

154 If the J is used, it means dressed one side, planed and jointed. If they want two sides, they state two sides.

Q. Look at Exhibit 1, and say whether or not all the labor performed upon lumber of that sort, to bring it to that condition, was performed at one operation or not, in your judgment.

A. I think it was.

Q. Do you have machinery which is competent to do just such work as that?
A. Yes, sir.
Q. At one operation?
A. Yes, sir.
Q. Do you have machinery that would have planed it on both sides, with the tonguing and grooving, at one operation?
A. Yes, sir.
Q. Do you have machinery which would have grooved it without the tonguing and planed it on one or two sides at one operation?
A. Yes, sir.
Q. Is that Exhibit 1 still lumber?
A. I think not.
Q. What is it now?
A. Flooring.
Q. Does not the term lumber include flooring?
A. I think it loses its identity after it becomes flooring, as lumber.
Q. You think it loses its identity?
A. As lumber.
Q. How do you sell it?
A. That Exhibit 1?
Q. Yes.
A. We sell it as flooring.
Q. How do you fix the price—by what sort of measurement, of what sort of quantity?
A. We usually do it by the thousand feet.
Q. Thousand feet of what?
A. Board measure.
Q. Rough measure?
A. Our custom is to measure the face and add half an inch.
Q. What do you add the half inch for?
A. For the waste.
Q. Is not that the same thing as selling it by the rough measure?
A. Oh, I don't know.
Q. Isn't it the equivalent?
A. We calculate to get about so much money for it.
Q. Isn't all rough measure sold by the thousand feet?
A. Yes, sir; I think so.

155 Q. Was there in the trade prior to 1894—was the subject of dressed lumber ever made any special note of or talked of or considered in the business?
A. I don't quite understand what you——
Q. Prior to 1894 was the matter of dressed lumber the subject of talk or conversation or understanding in the lumber business in buying and selling lumber?
A. Certainly.
Q. What was the understanding—the trade understanding prior to that time—of this term dressed lumber?
A. Planed one or two—surfaced one or two sides to an even thickness.
Q. Anything more done to it?
A. Not to dressed lumber.

Q. Supposing it was planed smooth on the edges, call it jointed, or whatever you please?

A. Jointed.

Q. Was that dressed lumber?

A. No, sir.

Q. Ceased to be dressed lumber when it had been planed on one or two sides?

A. My understanding is that it ceased to be lumber when it is manufactured into some specific article.

Q. What are the dimensions of an ordinary board in your business—an ordinary pine board?

A. That is very indefinite; from four inches up to forty.

Q. Exactly. How long are they?

A. The ordinary lengths is 12 to 16 feet, but then if you went down into Maine you would find from 6 to 40; if you went into Michigan you would find them as a rule 14 to 16; if you went into the South you would find them all lengths.

Q. If you take any of those boards and plane them on one side, are they still lumber as known in the trade?

A. Yes, sir; I think they are.

Q. If you planed them on two sides, are they still lumber as known in the trade?

A. Yes, sir.

Q. If you plane them on two sides and plane them on the edges are they known as lumber?

A. I think not. I think they have passed beyond that into a manufactured article of some kind, and when they pass into a manufacture I think they cease to be lumber.

156 Q. Can you explain the reason why, if that be the case, that in the selling and buying of lumber, as it is your testimony and everybody else's here, that you buy and sell by the thousand feet of rough-board measure?

A. No.

Q. If it ceases to be lumber, why do you adhere to the method of buying and selling lumber in the rough?

A. It is a convenient way of arriving at it; I can not give you any reason why.

Q. Well, it is a fact, isn't it?

A. What?

Q. It is a fact in a general way that it is bought and sold that way?

A. Yes, sir.

Q. Do you ship a good deal of lumber over the railroads?

A. Yes, sir.

Q. What in your exhibit do you ship such lumber as that Exhibit 1 in the cars?

A. I don't recognize that number 1 as lumber; that is flooring.

Q. Do you ship such stuff as that—I will call it stuff—that is broad enough?

A. Yes, sir.

Q. In the cars?

A. Yes, sir.

Q. How does the railroad receive it?

(Objected to as incompetent and immaterial.)

Q. I will put the question in a little different shape. What does the bill of lading describe it as?

(Objected to.)

Q. What do you say about it when you ship such stuff as that—what do you say about it; you have to say something to the railroad, on paper or some way?

A. We give the number of the car, and very frequently we say so many feet of lumber in the car. But I will go a little further: the railroad companies exact freight from us when we ship this kind of lumber unless we sign a paper guaranteeing to take the risk ourselves; they refuse to take it as ordinary lumber unless we guarantee the risk.

At this point (1.10 p. m.) a recess was taken till 1.45 p. m.

157 AFTER RECESS.

JOHN S. LOOMIS, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Brooklyn.

Q. What is your business?

A. Mill and lumber.

Q. How long have you been in such business?

A. I went in business in 1847, which makes it 48 years.

Q. State your experience in that business.

A. When I first went into business, the Woodworth patent covered the dressing of lumber entirely—the planing, tonguing, and grooving. We had to buy a surfacer and a matcher separate, and we run the two together in that way, and at that time there were no molding machines built known in the market, and we built our own molding machine and commenced to run moldings, irregular surfaces—everything that pertained to house finish. As we went along, in after years, we went into the retail lumber trade and are still in it—been in it for the last thirteen years.

Q. You have planing mills?

A. Yes, sir.

Q. Describe your mill.

A. My mill consists of eleven molding machines and four planing machines. The planing that we do is custom work. The moldings that we make, &c., goes all over the country, or different parts of the country.

Q. What is the extent of your business?

A. In dollars and cents?

Q. In feet.

A. Well, we run from five to seven million feet of lumber a year, take all kinds together, dressed and undressed, planed and tongued and grooved, &c.

Q. Are you familiar with the terms that are used in the lumber trade in speaking of the different classes of lumber?

A. Yes, sir.

Q. Are you familiar with the words dressed lumber?

A. Yes, sir.

158 Q. Are you familiar with them as they were used in August, 1894, and prior thereto?

A. Yes, sir.

Q. Prior thereto and up to this time?

A. Yes, sir.

Q. Well, now, will you state what dressed lumber is?

A. Well, dressed lumber is that which is planed one or two sides.

Q. Look at Exhibit 1.

A. Yes, sir.

Q. To what class of lumber would you state that belonged?

A. Flooring, tongued and grooved. This lumber is first dressed and then passes on and is tongued and grooved. It is not done by the same cylinder.

Q. Is the process of planing and tonguing and grooving done at the same time?

A. Not simultaneously. It is done on the same machine, but after it is dressed it is passed on to the matcher, the tonguer, and groover.

Q. Is there a separate machine known as the flooring machine?

A. Flooring machines, as they make them now, are made to run 4½ face of lumber. I don't know that the matchers and the surfacers are made separate; not in our market.

Q. State, if you know, whether that Exhibit 1 has passed beyond the state of dressed lumber.

A. Yes, sir; the lumber is dressed and passed on and is tongued and grooved.

Q. If an order had been given for lumber prepared as that, how would it be specified?

A. We give our orders and take our orders. They will order—there is a certain class of lumber that is sold by the piece, flooring and others that is sold by the thousand. We order our lumber from the South by the thousand, but we order it in special widths—so many thousand feet of three-inch face, or four-inch face, or five—and we take our orders in the same way. But if it is twelve and thirteen—the Albany board, as they call it—the tally board—they are sold by the piece. Ten is the standard length, but we get a percentage of twelve feet.

159 Q. If you were going to order lumber prepared as that, how would you designate it in the order?

A. If I was going to order it in either spruce or pine, I should order so many pieces 3½ faced; this is 3¼; we don't run on quarters; I should order it 3½ faced, tongued, and grooved. I should order whatever face I wanted; I should not order the five-inch strip to make the 4½ face, unless I bought the lumber to face it myself.

Q. (Repeated.) If you were going to order lumber prepared as that, how would you designate it in the order?

A. I have to qualify that by asking what length it would be. I would order it as flooring, if that is what you want to get at; I would order it as flooring, whatever face I required. The face is this part which shows when it is laid.

Q. I show you protestant's Exhibit A. Suppose lumber was described in this way, P. 1 S. & M., dry and well dressed?

A. Well, I am not familiar with the terms they use, you know; mine is local; my mill is local, and I don't sell only to builders either in our city or in New York, or out on the Island. They order so many pieces; if they order it in pieces we know they mean 12 or 13 feet; if they order it in feet, why it is generally different widths.

Q. Suppose this description meant planed on one side and matched, dry, and well dressed, and say, an inch thick and four inches wide, and 12 to 16 feet long, would you consider that lumber described as such had passed beyond dressed lumber?

A. Yes, sir.

Q. Suppose lumber was marked mill run, planed on one side, and matched and cut in pieces known as plank, cut in pieces of two inches thick and six inches wide and sixteen feet long, would lumber described as that have passed beyond dressed lumber?

A. How is that, if planed one side, tongued and grooved?

Q. Matched; yes, sir.

A. Yes, it would have passed beyond it.

160 Q. Suppose lumber was described as mill run, cut 95, planed on one side, grooved and beaded, and was 3 inches thick, and one lot 6 inches wide and 16 feet long, and another lot the same thickness and 7 inches wide and the same length?

A. All cut to a special length?

Q. Cut to a specific length and planed on one side and grooved and beaded; would that have passed beyond dressed lumber?

A. Yes, sir.

Q. Suppose a carload of lumber marked mill run, planed on one side and grooved and cut 95, and cut in pieces 3 inches thick, 6, 7, 8, and 9 inches wide, and cut to a specific length of 16 feet, would you consider that that lumber had passed beyond being dressed lumber?

A. Yes, sir; I consider any and all lumber passed beyond dressed lumber that is anything more than surfaced two sides.

Q. Suppose three carloads of lumber designated as P. 1 S. & G.,——

A. Grooved?

Q. That is planed on one side.

A. Grooved; yes, sir.

Q. Grooved and cut to an exact length, and that it was in pieces which were 3 inches thick, 8 inches wide, and 10 feet long, would you consider that had passed beyond dressed lumber?

A. Yes, sir.

By Mr. TUCKER:

Q. You say lumber like that Exhibit 1 there is prepared on the same machine, as I understand you?

A. Yes, sir.

Q. And that it is one piece only, by what?

A. It is planed and passes under the pressure bar; that is required in the machine to hold the lumber solid to the bed; while it is planed and after it passes under that pressure bar it comes to the vertical spindles that hold the side heads and it is matched there.

Q. Is it optional with the operator whether or not he applies those knives on the side for producing that tonguing and grooving?

A. If his machine is made for side cutters, he can put them on.

161 Q. Or leave them off?

A. Yes, sir.

Q. And he can put them on one or two sides; is that it?

A. Yes, sir; but he can not plane it with a matcher or match it with a planer.

Q. In giving an order for any lumber that has been dressed or anything done to it beyond its rough condition, do you or do you not specify in that order the dimensions and what you want to have done to the lumber?

A. I should say the specific order for dressing it; yes, sir. In sending South I always order my floorings such a face. The face is the square part of it that shows when it is laid on the floor.

Q. What else would you put in that order?

A. Nothing but the kind of lumber I wanted; number 1 or number 2 flooring.

Q. What does that 1 or 2 refer to?

A. The qualities of the lumber, the grade.

Q. Do you order it tongued and grooved?

A. No, sir; we order flooring.

Q. In the rough?

A. No, sir; not in the rough; planed. We order flooring; it comes in that shape. What we buy in the rough we plane ourselves; we buy that by the thousand feet as lumber.

Q. Then when it is planed one or two sides do you sell it in the same condition?

A. It is not in the same condition if it is planed.

Q. You say you do order it?

A. We have it in the rough.

Q. From the South you do order it planed?

A. We don't order it planed; we order flooring.

Q. Then they send you——

A. All dressed like that.

Q. Planed on one side?

A. Yes, sir.

Q. I ask you if you sell it to your customers in the same condition?

A. Yes, sir.

Q. What do you sell it?

A. Flooring. We order other kinds; we order ceiling, and we order 16-feet, 10-feet boards planed two sides and tongued and grooved and center beaded; beaded and center beaded.

162 Q. You say you order it from the South, and it comes to you planed on one side?

A. No, I don't; I say it comes like Exhibit 1; we order flooring and it comes as flooring; dressed as flooring, like that.

Q. You say not tongued and grooved?

A. No, sir; it is tongued and grooved. We use it for moldings and casings and all that kind of work, and we order that in the rough.

Q. As I understand, you give an order to the South for flooring?

A. Yes, sir.
Q. And you receive it with planed edges?
A. No, sir; tongued and grooved edges.
Q. Tongued and grooved edges?
A. Just like that; that is flooring. When we order flooring we get that in the yellow pine or North Carolina pine, whatever it may be.
Q. Do you specify in the order anything about the dimensions?
A. Yes, sir; we tell them whether we want it an inch or three or four inch face.
Q. Do you say anything about the length?
A. No, sir; never at all. It is always tongued and grooved or rough. We don't have any surfacing done by itself, any planing; we always have it planed, tongued, and grooved.
Q. Is that lumber?
A. Why, it is lumber, the same as a piece of cloth in a coat is cloth; of course it is lumber, but it is worked lumber.
Q. How do you buy and sell it?
A. By the foot.
Q. The superficial foot, or what?
A. The square foot of lumber measured.
Q. The lumber measured in the rough?
A. Yes, sir; and we buy it so much a thousand. You buy one lot for 14, one for 15, one for 16, when the qualities are the same; it depends upon the rate of freight and the stocks they have on hand.
Q. That you order as flooring, and it is called flooring, and still you sell it for other purposes?
A. No, sir; I say we sell it for flooring; what we order in the rough we sell for other purposes.
Q. Do you order that in the rough?
A. Yes, sir.
163 Q. What do you call it?
A. Rough; rough lumber.
Q. How do you pay for that?
A. We pay in notes, generally.
Q. Do you pay the notes—you always pay the notes, I suppose?
A. Yes, sir.
Q. What I want to know is how you pay for it in quantity?
A. That is not a question I can answer. If you can tell me what quantity I get—if I get 10,000 feet, at $13.00, I pay $130.00. I pay for it as it comes; rough, rough lumber.
Q. You pay for it by the thousand feet, don't you?
A. Yes, sir.
Q. That thousand feet is calculated by the rough measure?
A. I presume so; yes, sir.

THOMAS A. LAKE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:
Q. Where do you reside?
A. My home is in Rockville, Conn.

Q. Your business?
A. Lumber.
Q. How long have you been in that business?
A. Twenty years.
Q. What is the character of your business?
A. Retail.
Q. How much lumber do you sell in a year?
A. In the neighborhood of six to seven million.
Q. Through what part of the country does your trade extend?
A. Locally.
Q. Do you meet the lumbermen throughout the country?
A. Occasionally.
Q. Do you know the usages and terms of the lumber trade?
A. Well, partially.
Q. Do you know how lumber is designated—different classes or qualities of it?
A. I know how I designate it to get what I want.
Q. That is understood, is it, among the lumbermen?
A. They understand it.
Q. Do you know what is understood by the word' dressed lumber?
A. Why, my idea of it, I do.
164 Q. What is you idea of dressed lumber?
A. Surfaced or planed one or two sides.
Q. Was that the definition of dressed lumber in August, 1894, and prior to that time?
A. As I understood it.
Q. Will you examine Exhibit 1 there and tell us whether or not, in your judgment, that has passed beyond dressed lumber?
A. Why, I should say it had. If I was going to give an order I should simply say planed on one side and matched or tongued and grooved. I generally use the word matched in my description.
Q. That is synonymous with tongued and grooved, is it—matched?
A. Yes, sir.
Q. I hand you Exhibit 19. Do you know what kind of lumber that is?
A. Pine.
Q. Do you know for what purpose it is designated, if any?
A. We use it for factory flooring or roofing largely.
Q. Would lumber of that kind, dressed upon one side and grooved and matched—would that have passed beyond what is known as dressed lumber?
A. It would, according to my idea of it.
Q. Either in spruce or pine?
A. In any character of wood.
Q. I call your attention to protestant's Exhibit A. Now, lumber described as P. 1 S. & M., dry and well dressed, and one inch in thickness, four and five inches in width, respectively, and in lengths from 12 to 16 feet, according to the number of pieces in each length, would, in your judgment, lumber that had been so prepared as that have passed beyond the condition of dressed lumber?
A. It would, as I understand it; yes, sir.
Q. If a carload of lumber described as mill run, P. 1 S. & M., cut 95, two inches thick, 16 feet long, and ranging in width from 6 to 7 inches,

according to the number of pieces, would that, in your judgment, have passed beyond dressed lumber?

A. Yes, sir.

165 Q. And could not be classified as dressed lumber, and would not be.

A. Not according to my views of it.

Q. Suppose a carload of lumber, described mill run, cut 95, P. 1 S. & G. and beaded three inches thick, six or seven inches wide and 16 feet long, 97 pieces of one kind and 128 of the other—that is, in width. Would that lumber have passed beyond what is known in the trade as dressed lumber?

A. It would, according to my views of it.

Q. Suppose there were three carloads of lumber, described as order number 305, Holyoke, marked P. 1 S. & G., and butted to exact lengths, and there were 40 pieces, three inches by 8 by 10; 169 pieces, 3 inches by 8 by 20 feet; 22 pieces, 3 inches thick by 9 in width by 10 feet in length; 54 pieces, three inches thick by 9 in width by 20 feet in length, and 3 pieces, 3 inches thick by 10 inches wide by 10 feet long; 28 pieces, 3 inches thick by 10 inches wide by 20 feet long; 4 pieces, 3 inches thick by 11 inches wide by 10 feet long, and 33 pieces, 3 inches thick by 11 inches wide by 20 feet long; would lumber so designated and so described haved passed beyond being dressed lumber?

A. It would, according to my idea.

Q. And would orders given in that way, three of them so designated, each by one number and a certain number of pieces of the same lengths of 10 and 20 feet, indicate, in your judgment, that they were intended for some special purpose or not?

A. I should think they were intended for a special purpose; yes, sir.

Q. And if described as butted, and cut to exact lengths, would that indicate, in your judgment, that they were intended to fill some special order?

A. Yes, sir.

By Mr. TUCKER:

Q. I think you have said, Mr. Loomis, that your business was about five to six millions per annum; was I correct?

A. In the neighborhood of six millions.

166 Q. You have said also that you handled and dealt in both dressed lumber and rough lumber?

A. Yes, sir; I do.

Q. About what proportion of this five or six millions should you say was dressed lumber?

A. Well, dressed lumber—well, I don't know; it is hemlock, and leave it there as dressing; we have it worked further, which, I should think, would be perhaps 30 or 40 per cent; 40 per cent, I should say, was manufactured or milled beyond dressing.

Q. And the other 60 per cent was what—rough?

A. Rough; yes, sir.

Q. Where does your dressing come in?

A. The dressing comes in as I classify it; we give the orders and receive the orders.

Q. I understand; but you have accounted for your whole percentage, 60 per cent rough and 40 per cent advanced beyond the dressing. I ask you where your dressed lumber comes in there in your dealing. You have accounted for 100 per cent.

A. I have accounted for 100 per cent.

Q. Yes, sir; and no dressing?

A. I should say there was in the neighborhood of 40 per cent that we have milled in various ways.

Q. And the balance of it is what?

A. Rough.

Q. Where does your dressed lumber come in?

A. The dressed lumber, I think, is planed on one or two sides.

Q. I have asked you what proportion was dressed lumber, and you said only a small proportion. Was what you understood to be dressed lumber the 40 per cent so milled beyond dressing lumber?

A. Dressed, planed, and matched.

Q. 60 per cent was rough?

A. Yes, sir; an estimate; I can not tell exactly.

Q. The rough lumber is not dressed lumber, is it?

A. It is not.

Q. Then you haven't any dressed lumber at all that you deal in?

A. Yes; we have.

Q. You have accounted for 100 per cent of your dealings?

A. I reckon our dressed lumber comes in with our milled lumber.

167 A. All classed the same?

A. Not necessarily.

Q. Is it all lumber?

A. Yes, sir.

Q. Considered all lumber?

A. Yes, sir.

Q. Considered all lumber among the trade?

A. Yes, sir.

Q. How do you buy and sell it?

A. By the foot.

Q. By the thousand feet?

A. Yes, sir.

Q. Is that thousand feet calculated in the rough measure?

A. Yes, sir.

Q. Look at that Exhibit 1, and say whether or not all that is done to that lumber from the rough is done upon one machine?

A. I should say it was done upon one machine, although the evidence before me here, he—of course I understand his explanation of it; it passes beyond the dresser and goes into the matcher.

Q. But it is all one machine?

A. I call it one machine; yes, sir.

HENRY C. HOWE, called as a witness and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. State your residence, please.

A. Lowell, Massachusetts.

Q. How long were you engaged in the lumber business?

A. Upwards of thirty years.

Q. What is the extent of your business?

A. Well, I could not state, only from memory; we go up into the millions—several millions yearly.

Q. Do you have mills?

A. We have a planing mill and a molding mill connected with the yard.

Q. Are you familiar with the words dressed lumber as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto?

A. Yes, sir; I think I understand the term used by the trade with us.

Q. What is dressed lumber?

A. I class dressed lumber as planed one side or two sides to an even thickness.

168 Q. And if anything has been done to that beyond that, it then passes outside the limit or designation of dressed lumber?

A. Yes, sir.

Q. Will you look at Exhibit 1 and state whether or not, in your judgment, that has passed beyond the designation or class of dressed lumber?

A. It has.

Q. In what regard?

A. It has been planed one side, tongued, and grooved.

Q. What, in your judgment, takes it—what has been done to it to take it beyond dressed lumber?

A. The tonguing and grooving.

Q. Take that Exhibit 19; have you had any experience with factory roofing or flooring?

A. Yes, sir.

Q. What do you characterize that piece of lumber as?

A. I call it factory roofing or flooring, grooved.

Q. Have you much experience in that kind of lumber?

A. Yes, sir; I have used acres of it—a great many.

Q. Did you build factories?

A. Yes, sir.

Q. When that lumber had been planed on one side and grooved as that is, had it then, in your judgment, passed beyond being dressed lumber?

A. It has.

Q. Have you heard read the Exhibit A now shown you?

A. Have I heard it?

Q. Yes, sir.

A. Yes, sir.

Q. Will you state whether or not the lumber described in that exhibit has passed beyond what is known as dressed lumber?

A. Yes, sir.

Q. I read from order No. 305, Holyoke, June 15th, 1895, specification and carload of lumber designated as follows: P. 1 S. & G., and butted to exact lengths. What, in your judgment, is the fact as to whether lumber so described is passed beyond what is known and classified as dressed lumber?

A. It is.

Q. And would it be ready for use for a specific purpose?

A. Yes, sir.

169 Q. And suppose that lumber was cut in three inches thick and ten inches wide, and was cut in lengths of ten and twenty feet, would it then be fitted for some particular purpose, without any further process?

A. Yes, sir; it would.

Q. Do you know what the lengths of one carload of lumber cut in lengths of ten and twenty feet would indicate?

A. It would indicate that it would be ten feet.

Q. Would not those lengths—cut in those particular lengths—indicate that it had been prepared for a specific and special purpose?

A. Yes, sir.

By Mr. TUCKER:

Q. You have testified that you have been in the lumber business for thirty years?

A. Yes, sir.

Q. I do not remember that you testified whether or not you were in the lumber business at the present time?

A. I am not, sir.

Q. Were you in the lumber business in 1894?

A. No, sir.

Q. How long since you ceased to be?

A. I went out in 1891.

Q. Have you had since 1891 anything to do with the lumber business?

A. Yes, sir; I have bought and sold lumber; that is, for my own purpose.

Q. Did you keep lumber on hand for sale?

A. Yes, sir.

Q. Both rough and finished?

A. Yes, sir.

By General Appraiser WILKINSON:

Q He means since 1891.

A. No, sir.

By Mr. TUCKER:

Q. But prior to that?

A. Yes, sir.

Q. You kept lumber on hand rough and finished?

A. Yes, sir.

Q. Large quantity?

A. Yes, sir.

Q. About how much was your stock?

A. It would be guesswork; I know up into the millions.

Q. Did you have such lumber as that Exhibit 1 on hand?

A. Yes, sir; that style of lumber.

170 Q. You kept it in stock?

A. Yes, sir.

Q. Did you have your stock insured?

A. Yes, sir.

Q. What was your insurance policy on? What was the subject-matter?

(Objected to as incompetent and immaterial.)

A. Well, it was in lumber. I cannot say now how the policies read, but it described lumber, inserting sheds or inserting yards.

Q. Was there anything in those policies described except lumber in some condition?

A. No, sir; we had nothing to insure but lumber.

Q. Was the term dressed lumber, during the time that you were engaged in the lumber business, of frequent and common use?

A. Yes, sir.

Q. Now, I will ask you whether or not, as you understood the business, and from your experience in the lumber business, the term dressed lumber in 1894, and prior thereto, would have included such lumber as that of Exhibit 1?

A. No, sir.

Q. In a general, broad way; I don't mean to say definitely?

A. No, sir; I should give an order for dressed lumber, planed one or two sides, and there I should stop. I should not add anything to it; nothing to it whatever.

Q. If you wanted it in that shape, what would you say?

A. I should say planed one side and matched, grooved, and tongued, which means the same thing.

Q. How did you buy it and sell it?

A. Sold it in the same way.

Q. How did you buy it and sell it in quantity?

A. By the superficial measure.

Q. By the thousand feet?

A. Yes, sir.

Q. How was that thousand feet calculated?

A. As the lumber was in the rough.

171 CHARLES H. GETMAN, called as a witness and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. What is your full name?

A. Charles H. Getman.

Q. Where do you reside?

A. Stamford, Connecticut.

Q. What is your business.

A. Lumber business.

Q. How long have you been in it?

A. I suppose about thirty-five years.

Q. What is the amount of your dealings in lumber in the course of a year, on an average?

A. Anywhere from eight to ten millions of feet.

Q. What is the character of the lumber in which you deal?

A. All kinds of lumber.

Q. Do you deal in flooring?

A. Yes, sir.

Q. And planks?

A. Yes, sir.

Q. How extensive are your sales and purchases of lumber; over what country do they extend?

A. The purchase of lumber?

Q. Purchases and sales; yes, sir.

A. We purchase lumber in Canada, the maritime provinces, the Southern States as far south as Florida, on the Pacific Coast, in the Middle States, Virginia, Kentucky, Tennessee, some from Arkansas—pretty much the entire country.

Q. The extent of your sales; what country do they cover?

A. They are largely local, the sales, although we distribute some in contiguous territory; not so much so in the last few years as previous to that time.

Q. Have you any mills?

A. Not as a lumber firm; there is a mill adjoining our premises in which I have a small interest.

Q. Just describe that mill, will you?

A. Well, it is a mill that has a planing mill department in it; we have one machine that surfaces lumber there, one or two sides, called a double surfacer; we have another machine which is a flooring machine,
172 and still another that surfaces and matches at the same time. Then, in other portions of the mill we have molding machines and all the various kinds of machines that enter into the manufacture of wood-working machinery.

Q. Are you familiar with the terms and designations of the different classes of lumber?

A. Yes, sir.

Q. Do you know what is generally known in the trade as dressed lumber and what was known as dressed lumber at the time of the passage of the tariff act in August, 1894, and prior thereto?

A. Yes, sir.

Q. Please state what dressed lumber is or was.

A. Dressed lumber is, in my judgment, lumber that passes through such a machine as I spoke of, the double surfacer, dressed there either on one side or two sides.

Q. Will you please look at Exhibit 1; hasn't that passed beyond what is known as dressed lumber?

A. Yes, sir; it has passed into the realm of flooring.

Q. And lumber belonging to that class you would call and it would be known in the trade as flooring, would it?

A. We do designate it and so sell it as flooring.

Q. Take that other piece of lumber, Exhibit 19; are you familiar with lumber of that kind?

A. Yes, sir.

Q. A piece of lumber that size and description, faced on one side and tongued as that is, what would it be known as?

A. Factory roofing or factory flooring.

Q. Finished or worked as I have designated it, how would it be classed, as dressed lumber or would it have gone beyond that?

A. It would be classified as factory roofing or factory flooring, to be used as such.

Q. Would that have gone beyond being dressed lumber?

A. I think so.

173 Q. I hand you the protestant's Exhibit A, and ask you to look at it and to state whether or not the lumber described there has passed beyond what is known and designated in the trade as dressed lumber.

A. I should say that it had, sir, passed into a grade known as flooring.

Q. Please turn over to the third, fourth, fifth, and sixth parts of the invoice; do you see an invoice there marked 305, Holyoke?

A. Yes, sir.

Q. Examine it, please. Would lumber so described as that is there have passed beyond what is designated as dressed lumber?

A. I think so.

Q. State if that order would indicate that the lumber mentioned there was designated for a particular purpose and use.

A. Yes, sir.

Q. Would lumber prepared as it is described there or designated there be ready to put to use without any further work upon it?

A. Yes, sir.

Q. What would the length there indicate—the length in that one carload being cut part of it in ten feet length and part in twenty feet length—would that indicate in your mind any particular purpose or use or object?

A. Yes, sir; I should say it was designated for a specific purpose, and to be used only where such lengths could be used to advantage without waste; it indicates practically the distance between the beams in the building.

By Mr. TUCKER:

Q. In this mill you speak of, and in which you say you have some interest, you say there is one machine in which you can plane on both sides and tongue and groove or match it?

A. Yes, sir.

Q. Is that all done in one process at one time?

A. Practically; the knives that do the tonguing and grooving are attachments put on the machine; they pass through the knives that do the surfacing and go on a little further and strike these knives on either side; they are called planing and matching machines.

Q. Do you know anything about the origin of this word dressed as applied to lumber?

174 A. Why, no; I can not say that I can tell you where that term originated from.

Q. Have you always heard it since you have been in the business?

A. Yes, sir.

Q. Is it a term of common use in the lumber business?

A. I think so.

Q. Is or is it not applied at times to just such lumber as that Exhibit 1?

A. Well, in this way, that anything further than the dressing of it is specified. There has got to be something done to it besides dressing it unless you want absolutely dressed lumber, merely dressed lumber.

Q. If you want it dressed on two sides and order it of the lumberman who has the rough lumber, or you having the rough lumber and the man wants it dressed on two sides or planed on two sides, does or does not the order for it specify that it shall be dressed or planed on two sides?

A. It would be in some cases and in other cases not.

Q. If you had an order for dressed lumber, would you fill it just that merely, alone?

A. Well, we might, if we knew just what the man wanted.

Q. Well, supposing you didn't know?

A. If he was a customer with whom we had been dealing, and we knew that he wanted lumber dressed on two sides, we should send him——

Q. Supposing it was a new customer?

A. We should take pains to find out before we spent any money.

Q. Supposing you found out he wanted tongued and grooved?

A. He would order flooring or ceiling.

Q. Supposing he ordered it tongued and grooved?

A. It would be surfaced lumber.

Q. Did you ever have such an order as that?

A. Yes, sir.

Q. Ordered as dressed lumber?

A. Ordered as flooring. We have apartments in our bins in our shed that are set off for the flooring and the ceiling and the various kinds, and it is so ordered and so sold.

175 Q. Do you ever speak of that shed as the dressed lumber shed?

A. Yes, sir.

Q. Including all these things?

A. Yes, sir.

ROBERT C. LIPPINCOTT, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Philadelphia.

Q. What is your business?

A. Lumber.

Q. How long have you been in that business?

A. Twenty-four years.

Q. What is the extent of your business?

A. In volume or feet?

Q. In quantity, I mean.

A. Twenty to twenty-five million.

Q. What class of lumber do you deal in?

A. Mostly building lumber—not hard woods, building lumber.

Q. How extensive are your purchases, and over what territory do you purchase lumber?

A. In my supply of lumber, you mean?

Q. Yes, sir.

A. Well, Pennsylvania and the South; Michigan, Wisconsin; some in Kentucky.

Q. You are familiar with the terms and descriptions of the lumber trade through all those sections?

A. Yes, sir.

Q. Are you familiar with the words dressed lumber as used in the lumber trade at the time of the passage of the present tariff law in August, 1894, and prior thereto and up to the present time?

A. I know what is known in the lumber trade as dressed lumber; yes, sir; at that time.

Q. How was it used, and what class of lumber did it designate in the trade?

A. Well, it was applied to any kind of lumber; it means lumber that is brought to a thickness by dressing either one or two sides.

Q. Please examine Exhibit 1 and state whether or not that has passed beyond what is known as dressed lumber.

A. I think so.

176 Q. What work has been done upon it, in your judgment, to take it beyond that?

A. Dressing on the edges, or tonguing and grooving.

Q. What would that piece of lumber be known as in the trade—lumber of that description?

A. Flooring.

Q. And suited for a particular purpose, is it?

A. Yes, sir.

Q. Examine Exhibit 19 there; do you know by what name that would be known in the trade?

A. Well, if called by name other than simple description of its workings, it is known as factory flooring; that is.

Q. Has lumber that has gone through that operation passed beyond being known as dressed lumber?

A. Yes, sir; we would not get an order for that and call it dressed lumber.

By Mr. TUCKER:

Q. What?

A. We would not get an order called merely dressed lumber when they wanted that.

By Mr. GIBSON:

Q. Have you heard read the protestant's Exhibit A?

A. I have heard you read those this afternoon.

Q. Do you remember the descriptions I read?

A. Yes, sir; a number of them.

Q. Would lumber so described be known in the trade as dressed lumber, or have they passed beyond that?

A. I think it is passed beyond that. Nobody would understand it as dressed lumber. We would expect those designations to be applied to it if they wanted it that way.

Q. In what state or class would lumber described as it is in this Exhibit A be known as?

A. We would call that worked lumber to a specific specification.

177 By Mr. TUCKER:

Q. I think you have said, Mr. Lippincott, that you dealt in both rough lumber and dressed lumber. Am I right?

A. No; I didn't say so, but I do; I don't think that was asked before.

Q. Do you have that which is dried lumber?

A. Dried lumber?

Q. Yes, sir; kiln dried.

A. Yes, sir; we sell kiln-dried lumber.

Q. Do you have a shed where you keep dressed lumber, or a building where you keep it?

A. No, sir; not in Philadelphia.

Q. Well, anywhere?

A. No, sir.

Q. Do you keep lumber on hand—a stock on hand?

A. At the mills.

Q. Have you a mill?

A. I have no mill; I buy the outputs of mills.

Q. Are you an agent for mills?

A. No, sir; I buy the output—the cut.

Q. You have the exclusive purchase of the whole product?

A. Yes, sir.

Q. You are interested, then, to have that mill get as good a price as it can, aren't you?

A. No; I am interested that I shall get the good price and buy as cheaply as I can.

Q. Are you interested for or against the importation of foreign lumber—Canadian lumber?

A. Not by any interest in any planing mill.

Q. Are you interested in any way?

A. No.

Q. Have you a yard in Philadelphia where you keep lumber?

A. No, sir; I am interested in a yard, but I have no yard; no, sir.

Q. Do you keep lumber on hand?

A. At the mill, sir.

Q. At the mill?

A. Yes, sir.

Q. Does the mill have sheds in which they keep certain kinds of lumber, or buildings?

A. No, sir.

Q. Then is the lumber outdoors, all of it?

A. Most of it; those mills that I speak of it is; yes, sir.

178 Q. Then the whole lumber is exposed to the elements, is it?

A. Most of it; yes, sir.

Q. Dressed lumber and all?

A. Yes, sir.

Q. Do you have kiln-dried lumber?

A. Not in those mills; I deal in kiln-dried lumber, which I get from mills and make up.

Q. Where is that kept?

A. In sheds, often.

Q. Do those mills deal in dressed lumber?
A. Yes, sir.
Q. Do they put the dressed lumber in the shed, or keep it out of doors?
A. In a shed.
Q. Don't they have lumber like that Exhibit 1?
A. Yes, sir.
Q. Is that in a shed with the dressed lumber?
A. Yes, sir.

JOHN W. ROBINSON, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Please state your residence.
A. I live in Buffalo, New York.
Q. Your place of business?
A. North Tonawanda, New York.
Q. What is your business?
A. I am a dealer in lumber and a manufacturer of flooring, ceiling, siding; various kinds of house trim.
Q. How long have you been in this business?
A. I have been in business about twenty years.
Q. Tell us the extent of your business, so far as your purchases are concerned; over what territory it extends?
A. I purchase my lumber mostly in Michigan and Wisconsin, going into Minnesota for some of it.
Q. How many millions do you deal in a year?
A. Say about twenty million; sometimes more, sometimes less.
Q. Over what extent of country do you sell your lumber?
A. I sell it pretty much through all of the Eastern and Southeastern States.
Q. Have you mills at Tonawanda?
A. Yes, sir.
179 Q. What kind of mills?
A. Planing mills.
Q. How many planers do you have?
A. Six.
Q. Any other machines?
A. Some others; yes, sir.
Q. Have you any other kinds of machines?
A. I should say six planers, and one is a surfacer and the other is a flooring machine, as it is commonly called; some manufacturers call them flooring machines, others call them planers and matchers.
Q. Are you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the present tariff act, in August, 1894, and prior thereto, and at the present time?
A. Yes, sir.
Q. Will you define to us what you know to be dressed lumber?
A. Lumber dressed one or two sides.
Q. Examine Exhibit 1. Has wood prepared as that has been passed beyond what is known as dressed lumber?
A. Yes, sir.

Q. In what particular?
A. In that it is tongued and grooved.
Q. Please look at Exhibit 19 and state what that is.
A. That is factory roofing or flooring, as I understand it.
Q. Has it passed beyond what is known as dressed lumber?
A. Yes, sir.
Q. Is it prepared for any special purpose?
A. I think so.
Q. Have you heard read the protestant's Exhibit A?
A. Yes, sir; I have heard you read them several times.
Q. Would lumber described as it is in that exhibit have passed beyond what is known as dressed lumber?
A. Yes, sir.
Q. In this exhibit are three carloads of lumber which are designated as order number 305, Holyoke, and they are all specified as P. 1 S. & G., and butted to exact lengths, and they are designated in pieces, and they are all three inches in thickness and from 8 to 11 inches in width,
180 cut in lengths of 10 and 20 feet. On seeing lumber so prepared as that what would it indicate, if anything, to you?
A. It would indicate to me that it was prepared—manufactured for a specific purpose.
Q. State if the lengths would indicate anything.
A. They would, undoubtedly. I notice in reading some of those lengths they were cut 16½ feet, 10 feet, &c., indicating that they were prepared for a specific place or purpose.
Q. Would lumber prepared as described there be put to a use without any further work upon it?
A. Yes, sir.
Q. And would lumber prepared as that is have passed beyond what is known as dressed lumber?
A. Yes, sir.

By the CHAIRMAN:

Q. State whether the term worked is ever applied to lumber.
A. Yes, sir; very frequently.
Q. What is indicated by the use of the word worked?
A. It indicates a manufacture of molding, of casings, or, in fact, changing the original form of the board or plank in any way.
Q. Indicates some application of skill or labor beyond that required for dressing, does it?
A. Oh, yes.

By General Appraiser SHARRETTS:

Q. Has the Exhibit 1 in this case been worked, as you understand the term?
A. Yes, sir.

By the CHAIRMAN:

Q. And also the other exhibit, number 19?
A. Yes, sir.

By Mr. TUCKER:

Q. I think you have said that you had a mill at Tonawanda?

A. Yes, sir.
Q. What do you do at that mill?
A. We manufacture flooring, ceiling, siding, and various kinds of house trim.
181 Q. You take the lumber in the rough?
A. Yes, sir.
Q. That you buy in different localities, as you have said?
A. Yes, sir.
Q. The importation of lumber of this character, like what you have been examined upon there, Exhibit 1 and Exhibit 19, would that have any tendency to interfere with the profits of your business in the mill, provided it was imported free?
A. It might. I don't know that it has in any way.
Q. State whether or not what was done to Exhibit 1, in your judgment, has been done to that from the rough, was all done with one machine.
A. Yes, sir.
Q. And at one time?
A. Yes, sir.
Q. Is it bought and sold by the thousand feet?
A. Yes, sir.
Q. Thousand feet what sort of measure?
A. We sell the measure that was contained in the board before it was worked.
Q. Rough measure?
A. Yes, sir.
Q. That is lumber, is it?
A. It is lumber in a sense that a door is lumber, or moldings are lumber, or the parts of a table before it was put together was lumber, or that my coat is cloth.
Q. When you sell it, what do you invoice it as?
A. Flooring, I think, almost invariably.
Q. Do you describe it by dimensions?
A. That would probably be described as flooring, 3½ face.
Q. Would you say anything more about it?
A. Possibly you might put on the letters D. 1 S. or something of that sort.
Q. Would you say T. & G.?
A. No; I don't think we use that term; it would mean the same thing if we used the term as D. 1 S. & M.
Q. Do you use the term M. or matched?
A. We do sometimes.
Q. If you had an order for goods of that kind, how would you get an order; how would it be described?
A. That would depend altogether on the customer who sent it.
182 Q. Explain that, if you will.
A. For instance, a week ago last Monday morning I received orders for 11 carloads of lumber called Philadelphia fencing, which would mean a strip, a six-inch board, manufactured into Philadelphia fencing by planing it two sides, beading and center beading on both sides, and tonguing and grooving the edges. In Boston they would call that six-inch sheathing.

Q. It comes from Philadelphia, or rather you call it Philadelphia fencing?

A. The Philadelphia people call it Philadelphia fencing. In Boston they would call it sheathing.

Q. That simply refers to a class of lumber, does it not?

A. No, sir; it refers to the way in which the lumber is manufactured.

Q. Still it is lumber?

A. It is lumber in the same sense that my coat is cloth.

Q. Do you keep it on hand?

A. No, sir.

Q. Manufacture it?

A. Yes, sir.

Q. After you manufacture it do you put it into a shed?

A. No, sir.

Q. Ship it off somewhere?

A. Put it in the cars.

Q. Do you sell rough lumber?

A. Yes, sir.

Q. Which is invoiced by the thousand feet?

A. Yes, sir.

Q. Just the same as this is?

A. Yes, sir.

Q. And measured the same way?

A. Yes, sir.

CARROLL S. PAGE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where is your residence?

A. Hyde Park, Vermont.

Q. Were you ever in the lumber business?

A. Yes, sir.

Q. For how long?

A. About eighteen years.

Q. What was the extent of your business?

A. From seven to fifteen millions a year in feet.

Q. What was the extent of the territory you covered in your purchases and sales?

183 A. My purchases are—I am rather a commission dealer than a purchaser. My lumber all comes from northern Vermont. I sell to Massachusetts, Rhode Island, and Connecticut, largely; some in New Hampshire.

Q. Are you familiar with the words dressed lumber as used in the lumber trade in August, 1894, and prior to that time, and now?

A. I think I am fairly so, as used in northern New England.

Q. Tell us, please, what is known as dressed lumber in the trade.

A. I think the trade know it generally as lumber that has been run through a surfacer, either one or two sides.

Q. Examine Exhibit 1 and tell us whether or not that has passed beyond what is known as dressed lumber.

A. That would be my opinion.

Q. What is it known to the trade as—lumber which is similar to that?
A. That would be number one spruce flooring.
Q. As that is prepared, would it be suitable for a specific purpose?
A. Yes, sir.
Q. And could be used without any further work upon it, except as to put it down and cut it into proper lengths?
A. My experience in the business is that ninety to ninety-five per cent of this lumber is used for that purpose and that purpose alone.
Q. Please examine Exhibit 19 and tell us what that is.
A. I have done very little in three-inch factory flooring; I have sold enough to know, however, that that is what is called factory flooring or roofing.
Q. Such lumber as that is used for a specific purpose?
A. Yes, sir.
Q. Is it usually made to order, or is it kept in stock?
A. To order almost exclusively.
Q. Have you heard read the protestant's Exhibit A?
A. I have, sir; several times.
Q. And you remember the descriptions of the lumber given in it?
A. I do.
Q. Lumber prepared as the lumber is described in this exhibit; has it passed beyond what is known as dressed lumber?
A. That is my opinion.
184 Q. Would it be so known in the trade as having passed beyond?
A. I think it would.

By Mr. TUCKER:

Q. I think, Governor, you said you were a commission dealer?
A. Yes, sir.
Q. You do not keep lumber on hand, then, I understand from that?
A. No, sir.
Q. You sell for other parties or buy for other parties?
A. Sell for other parties.
Q. Do you buy of mills?
A. No, sir; we buy the logs for mills and then sell their product after the lumber is sawed.
Q. Do you understand this process of dressing lumber?
A. I do.
Q. Is it done on a planing machine?
A. In northern Vermont the mills are nearly all small, and I don't think of a single spruce mill in the county in which I live that has a combined planer and matcher; the mills have a surfacer or planer and run the board through that, and then through another machine called the matcher.
Q. A separate affair?
A. A separate machine; yes, sir.
Q. You have been in larger mills than those you speak of?
A. Yes, sir.
Q. Do they have machines there where it is done in one process?
A. Yes, sir; and I want to correct myself. We have in our county a hard-wood flooring manufacturer who uses a combination machine.

Q. So there are mills where that is done all in one machine?
A. Yes, sir.
Q. You consider it all as lumber, do you?
A. Yes, sir.
Q. Buy it and sell it as lumber?
A. Yes, sir.
Q. Sell it by measurement?
A. Yes, sir.
Q. By what measurement?
A. Surface measure.
Q. That is the way you sell rough lumber, isn't it?
A. Yes, sir.

185 By the CHAIRMAN:

Q. Is the term worked ever applied to lumber in the trade?
A. It may be, although not generally, as a rule.

MARCUS M. DARR, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?
A. In Buffalo, New York.
Q. What is your business?
A. I am engaged in the lumber business in Tonawanda.
Q. How long have you been engaged in that business?
A. About twenty-five years.
Q. What is the character of lumber that you deal in?
A. Mostly pine lumber.
Q. Over what extent of territory do your purchases of lumber extend?
A. We purchase most of our lumber in Michigan, Wisconsin, and Minnesota.
Q. Where do you sell it?
A. We sell it all through the Eastern country—New England, New York, Pennsylvania, New Jersey, Maryland, Delaware.
Q. What amount of lumber do you deal in in the course of a year in feet?
A. Oh, forty-five to fifty million feet.
Q. What class of lumber is it that you sell?
A. We aim to handle usually a high class of pine lumber.
Q. Used for building purposes?
A. Yes, sir.
Q. Are you familiar with the words dressed lumber, as used in the trade at the time of the passage of the tariff act of August, 1894, and prior thereto?
A. I was.
Q. How was the term dressed lumber used, and what classes of lumber did it designate?
A. I have always understood dressed lumber to mean boards dressed one or two sides.

186 Q. Will you examine Exhibit 1 and state whether or not that has passed beyond what is commonly and generally known in the trade as dressed lumber?

A. I should say it had?

Q. In what respect?

A. I should call that a piece of flooring; it is made for a specific purpose; it is dressed and matched, the edges are tongued and grooved, you see.

Q. Will you examine that Exhibit 19? Are you familiar with lumber of that kind?

A. Yes, sir.

Q. What is that known as?

A. We call that factory flooring or ceiling.

Q. That has been dressed on two sides and grooved?

A. Yes, sir.

Q. And in that condition has it passed beyond the class known as dressed lumber?

A. I should say it had; manufactured for a special purpose.

Q. You have heard read, have you, protestant's Exhibit A in this case?

A. I did.

Q. And the descriptions of the lumber?

A. Yes, sir.

Q. Lumber described in this exhibit, would it have passed beyond what is known to the trade as dressed lumber?

A. I should say so; yes, sir.

By. Mr. TUCKER:

Q. Have you any mill at Tonawanda?

A. Yes, sir.

Q. Any lumber mill?

A. Yes, sir.

Q. Where you work upon lumber in various ways, do you?

A. Yes, sir.

Q. You dress it there?

A. Yes, sir.

Q. Do you prepare such lumber as that, Exhibit 1?

A. We do, when we have an order for it.

Q. Do you keep it in stock?

A. Oh—Exhibit 1?

Q. Yes, sir.

A. We keep flooring in stock, certain kinds.

Q. How about that Exhibit 19, which you hold in your hand?

A. We make this when we have an order for it.

187 Q. You don't keep that in stock?

A. No, sir.

Q. You have dressed lumber?

A. No, sir; we make it when we have an order for it.

Q. Don't you keep it on hand?

A. We don't ordinarily keep it on hand.

Q. Do you have a shed where you keep dried lumber?

A. Yes, sir.

Q. Do you have a shed where you keep dressed lumber?

A. We have a shed where we keep flooring, shelving, Philadelphia fencing, and stock of that kind.

Q. Have you a shed where you keep rough lumber?

A. We don't generally put that in-doors.

Q. You do keep such lumber as Exhibit 1 on hand?

A. Yes, sir.

Q. Where do you keep that?

A. In a shed.

Q. In your dressed lumber shed?

A. In a shed adjoining our mill.

Q. Is it a dressed lumber shed in contradistinction to a rough lumber shed?

A. You may call it that, if you wish to.

Q. I want to know what you call it?

A. I don't have a rough lumber shed.

Q. Do you have a dressed lumber shed?

A. Yes, sir.

Q. Do you put that in it?

A. Yes, sir.

Q. Take that Exhibit 19; what do you call that style of dressing here?

A. We call that dressed two sides and grooved for spline.

Q. How is it done in your mill?

A. We do that with a heavy flooring machine.

Q. Well, is it a planer, known as a planing machine?

A. Well, we buy them as flooring machines.

Q. What do they do, what do they accomplish?

A. A flooring machine will make almost any of this work; it will dress it and match it, dress it two sides and match it; it will make any such work as Exhibit 18, any ordinary moldings.

Q. Do you have molding machines in your mill?

A. We do.

188 Q. They are separate and distinct from these others that you spoke of, are they?

A. We have two molding machines, and we also have one large double surfacer.

Q. Are you interested, Mr. Darr, in not having Canadian or foreign lumber brought in here free or in that condition?

A. Well, I hadn't—we get some of our stock from Canada occasionally.

Q. In what condition?

A. Rough lumber usually.

Q. I am speaking of it in the condition of Exhibits 1 and 19; I ask you if you are interested in not having that come in here free of duty—lumber of that character?

A. I had not thought much about that in this case. I was not in favor of that part of it.

Q. I am not asking you that; I am simply asking you a question of whether or not you are interested in not having lumber in that condition brought in here, free of duty, from Canada into the United States?

A. I would rather not have it come.

Q. I think you have said you had a double surfacing machine; am I correct?

A. Yes, sir.

Q. Has that the attachment, or is it prepared to do anything except to plane the two sides?

A. It will plane one or two sides only.

Q. And that is all?

A. That is all.

Q. Is that the common name of it, double surfacer?

A. We buy it from the manufacturer as a double surfacer, yes, sir.

Q. Is it ever called a dressing machine?

A. Not to my knowledge; I may have heard it called a planer.

Q. Prior to last year, that is prior to 1894, Mr. Darr, was this term of dressed lumber in common use in the lumber business; I mean, when I say common use, I mean when you and somebody else are making a trade about lumber, was it talked about as dressed lumber or not?

A. I have known of dressed lumber ever since I have been in the business.

189 Q. I understand; but I am asking you if it was prior to 1894 in common use.

A. It meant——

Q. I want you to answer that question, if you will; was or was it not in common use prior to 1894?

A. What do you mean by common use?

Q. I think it is very simple. General use, I will say.

A. That term will not cover all work of this kind.

Q. I am not asking you that; I am asking you whether, prior to the year 1894, the term dressed lumber was of common or general use in the business by people dealing in it?

A. I have often heard the term.

Q. Was it of common or general use?

A. I should think it perhaps was.

Q. What?

A. I should think perhaps it was.

Q. Don't you know as a fact whether it was or not? You have been in the business twenty-five years.

A. I have always understood by dressed lumber, lumber surfaced one or two sides, and that was in general use.

Q. I am asking you whether or not the term dressed lumber was of common or general use in the lumber business prior to the year 1894.

A. I think so.

Q. How is that lumber sold—Exhibits 1 and 19—by what quantity, or how is the quantity fixed?

A. Sold by the foot—thousand feet.

Q. How is that thousand feet computed?

A. In flooring we would count it as half an inch wider than the face measure.

Q. Why do you call it half an inch wider than the surface measure?

A. Because that is the custom of the trade.

Q. Is that half an inch supposed to be rough measure?

A. That is supposed to cover the working; you see, that tongue takes the most of it, and a little to dress the edge.

Q. You sell the rough lumber?

A. Yes, sir.

Q. Sell that by the thousand feet?

A. Yes, sir.

190 Q. Sell them in the same way?

A. Sell them all by the thousand feet; the only difference is in the computing of it.

JOHN S. ESTABROOK, called as a witness, and, being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Saginaw, Michigan.

Q. Your business?

A. Lumber.

Q. How long have you been in that business?

A. Sixty-five years; fifty years since I knew much about it; I took it in naturally at my birth.

Q. Describe to us the extent of your business.

A. It is smaller than it used to be, but in the last forty years it has varied from ten to one hundred millions a year; for twenty years past I have been a manufacturer; prior to that I was a general dealer, buyer, and seller.

Q. What do you mean by manufacture?

A. Manufacturing the logs into the lumber in the sawmill and the lumber into manufactured lumber in a planing mill.

Q. Describe your manufacturing in the planing mill.

A. I dress or plane lumber; I work flooring, ceiling, siding, base, moldings, box shooks, and most everything that is made in what is commonly termed a planing mill.

Q. Through what extent of country do you buy?

A. Well, I have made probably two-thirds of all the lumber that I have worked in my planing mill; I have manufactured in the sawmill from the logs cut from my own woods in Michigan; my own timber. Now I buy four-fifths of my lumber mostly on the Saginaw River or on Lake Michigan, on Lake Superior regions down along the shore.

Q. What was the extent of your market in trade?

A. The entire United States, sir; in short, New England, eastern New York, Pennsylvania, New Jersey, Baltimore, Washington, Richmond, Jacksonville, Florida, New Orleans, over in Mexico—in

191 other words, I have shipped lumber to all these different points, and mainly in what we call the Eastern market.

Q. Were you familiar with the words dressed lumber, as they were used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto and up to the present time?

A. Yes, sir.

Q. How were the words dressed lumber used, and what class of lumber did that designate?

A. What do you mean by what class of lumber—grade of lumber, what grade?

Q. Oh, no.

A. Well, dressed lumber would mean any lumber that was dressed one or two sides; that is the way I understood, and I understand it was generally understood in the parlance of the trade.

Q. Will you examine Exhibit number 1; what is that known as in the trade?

A. That is spruce. We don't manufacture spruce in our country. If it was a piece of pine I should say it was a piece of pine flooring.

Q. Has that, in its present state, passed beyond what is known in the trade as dressed lumber?

A. I should say it had, sir.

Q. In what respect?

A. By being matched, tongued, and grooved.

Q. You have heard me read the protestant's Exhibit A and the descriptions of lumber?

A. I have heard you read them several times, but with this confusion I would like to have you read them again if you want me to answer them.

Q. I read you part of this exhibit marked as June 15th, 1895, order number 305, Holyoke, specification, one car, P. 1 S. & G., and butted to exact lengths, and the different amounts of it are put in pieces of three inches in thickness and it runs from eight to eleven inches in width and cut in lengths of ten and twenty feet. Would lumber so specified and described as that be recognized in the trade as having passed beyond dressed lumber?

A. I should say so, surely.

192 Q. Do you know whether or not such lumber would be designated by any particular name?

A. Well, for flooring, roofing for factories, shops, mills, &c., thick flooring for that especial purpose. I will say that we make these—not a very large amount it, but we have orders for more or less of it.

By Mr. TUCKER:

Q. Do you have a mill?

A. Yes, sir.

Q. More than one?

A. I have a sawmill and a planing mill.

Q. Has the planing mill more than one machine in it?

A. Yes, sir.

Q. How many, if you please?

A. Seven of them, sir.

Q. Are they all planing machines?

A. They are all machines that dress lumber and plane lumber and make it into different forms; yes, sir.

Q. Some of them do such work as that Exhibit 1 there?

A. Yes, sir.

Q. All done at one time?

A. Yes, sir; we make it all at one time on a flooring machine.

Q. Would you rather that Canadian lumber of that nature and in that condition should be admitted free in the United States?

A. My interest is in the present stock of lumber I have. It makes no material difference to me, but I would much rather it would not come in free, as injurious to the general planing interests of the whole country.

Q. How long has this term dressed lumber been in use by the lumber dealers?

A. Ever since I can remember anything about it.

Q. How is that used by them?

A. To indicate surfaced lumber—planed lumber.

Q. Do they talk about dressed lumber?

A. Yes, sir.

Q. People who buy it and sell it talk about dressed lumber?

A. They say they want lumber dressed, planed, or some of them say surfaced; different terms in different localities; it means the same thing.

193 Q. Do you keep a building where you keep dressed lumber?

A. I have a shed in my yard—two of them.

Q. Do you keep such lumber as that Exhibit 1 on hand?

A. Yes, sir.

Q. Keep it in that shed?

A. Yes, sir.

Q. Do you keep your lumber insured?

A. Yes, sir.

Q. Is the policy for lumber?

A. Lumber; yes, sir.

Q. Anything else?

A. Lumber in shed, rough and worked, I think it is.

Q. Is the word dressed used in the policies?

A. I would not say whether it was dressed or worked—one or both.

Q. You used the word worked. Not many of the gentlemen have used such a word here. I would like to have you say in what sense you used the word worked.

A. Some man might give me an order 1 by 4, number one spruce worked flooring. That would be, perhaps, the way the order would be given me. I would understand he wanted it worked as Exhibit 1 is.

Q. Supposing he didn't want it planed at all, would there be such an order as that?

A. No, sir; I never heard of such a thing. He would order four-inch flooring strips.

Q. Suppose, instead of having that tonguing and grooving, it was simply jointed. You have such a thing as that?

A. I don't remember having one simply jointed without being surfaced.

Q. Well, have it surfaced.

A. That is what we call four-side work.

Q. Is that dressed lumber?

A. All worked and manufactured lumber is dressed in the process of manufacturing it. There is no denying that fact. It is part of the process of manufacturing.

Q. Do you have flooring and sheathing and shelving, &c., in your lumber?

A. Yes, sir.

Q. Are those terms descriptive of the different conditions of
194 dressing lumber which you have talked about?

A. The way I understand them—I believe it is the way it is generally understood in the trade—lumber is known by the term you give for it, what is wanted.

By Mr. GIBSON:

Q. You mean, then, do you not, that if lumber has passed beyond being surfaced on both sides that it has passed, then, beyond what is known as dressed lumber?

A. Yes, sir; that is what I mean to infer. What I mean to say is to take a piece of lumber—Exhibit 18, for instance. It is what I would call a ceiling base; you may call it wainscoting. It has various names, but it is a lumber. Well, I would say that that lumber, in order to work it in this way, it is dressed, but it is passed beyond what is understood to be surfacing lumber. As I understand the word surfaced as applied to lumber, it applies simply to surface or smooth one or two sides. Anything you do beyond that it passes beyond the term as known in the trade.

Q. You understand the surface to be the same as, or equivalent to, the word dressed, do you?

A. Dressed, surfaced—dressed or surfaced lumber.

Q. The two terms are identical?

A. As I understand it, the word is common. I want a lot of boards planed one side—surfaced, dressed. They are synonymous in different localities with different people.

Q. So known in the trade?

A. So understood in the trade, sir.

By Mr. TUCKER:

Q. I would like to ask how, in buying and selling that lumber, the quantity is estimated?

A. By the thousand feet.

Q. How is the thousand feet computed?

A. By the rough lumber; that Exhibit 1 would be cut from a piece 1 by 4.

Q. Do you sell rough lumber in the same way?

A. Yes, sir; the same measure.

195 E. B. FREEMAN, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Norfolk, Virginia.

Q. What is your business?

A. I am a manufacturer of rough lumber.

Q. Where do you carry on such business?

A. At Norfolk, Virginia; Courtland, Virginia, and Hampton, Virginia; I am interested in three mills.

Q. How long have you been in business at these places?
A. For the last eight or nine years.
Q. Were you in business before at any other place?
A. Yes, sir.
Q. Where?
A. I was in business in Clearfield, Center County, Pennsylvania; in Florida, and on the Eastern Shore of Maryland.
Q. What is the extent of your dealings in regard to the territory?
A. We don't purchase any lumber. We buy the standing timber and manufacture it into the rough lumber.
Q. In what markets do you sell your lumber?
A. Baltimore, Philadelphia, New York, and the Sound ports down as far as Boston.
Q. What is the amount, in feet, that you deal in in the course of a year?
A. The annual output is about thirty to thirty-five million—of the three mills.
Q. Do you have planing mills in which you manufacture?
A. No, sir.
Q. Are you familiar with the words dressed lumber, as used in the lumber trade during the time of August, 1894, and prior thereto?
A. Yes, sir.
Q. What does the word dressed lumber designate?
A. In our trade we classify the lumber; that is to say, that boards of any thickness or any width, surfaced one or two sides, would be called dressed lumber; or boards of a certain width, tongued and grooved and surfaced on one or two sides, would be flooring or ceiling or wain-
196 scoting, or whatever—we have a regular price list in our trade, and specify these different kinds of lumber in that way.
Q. Will you look at Exhibit 1; would lumber prepared as that exhibit has been have passed beyond what is known in the trade as dressed lumber?
A. Yes, sir; we should call it flooring.
Q. What would change it from dressed lumber; what work on it?
A. The fact that it is tongued and grooved and fitted for a specific purpose.
Q. Are you familiar with factory flooring?
A. No, sir; I am not.

By Mr. TUCKER:

Q. You have said that your business was buying standing trees and making rough lumber?
A. Yes, sir.
Q. Do you ever make dressed lumber?
A. No, sir.
Q. Do you know anything about dressed lumber from dealing in it?
A. I have bought and sold it, sir.
Q. To what extent?
A. Not to any great extent.
Q. About how much a year?
A. Oh, it would not amount to a million feet a year.

CARLETON M. SMITH, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?
A. Buffalo, New York.
Q. And your business?
A. Wholesale pine lumber business.
Q. Same place?
A. No; North Tonawanda.
Q. How long have you been in that business?
A. About ten years.
Q. What is the kind of lumber that you deal in?
A. White pine principally; some little Norway, but it is principally white pine.
197 Q. Are you a manufacturer of lumber?
A. No, sir.
Q. What is the amount of feet that you sell in the course of a year?
A. About twenty-five million.
Q. Where do you purchase your lumber?
A. Michigan, Minnesota, and Wisconsin; occasionally we buy a small quantity in Canada, but not much.
Q. Where do you sell it?
A. In the Eastern and Middle States.
Q. Do you deal in lumber known as flooring?
A. We have our lumber manufactured into flooring and sell flooring; yes, sir.
Q. Are you familiar with the word dressed lumber as used in the lumber trade?
A. Yes, sir.
Q. Do you know, prior to August, 1894, and subsequent thereto, how the word dressed lumber was used and what it designated?
A. It meant lumber that was surfaced either one or two sides, made smooth by being put through a planer.
Q. Will you examine Exhibit 1; what is lumber like that called in the trade?
A. Flooring.
Q. Has lumber prepared as that sample is passed beyond what is known as dressed lumber?
A. Yes, sir; in my opinion.
Q. In what particular?
A. That has been tongued and grooved.
Q. Are you familiar with lumber like Exhibit 19?
A. Yes, sir.
Q. What is that known as?
A. Factory flooring.
Q. Do you ever buy and sell lumber of that kind?
A. We have sold it; we have never bought any; had it manufactured that way.
Q. You had it made then, to order, that way?

A. Yes, sir; we have the lumber in stock, and get orders for it to be manufactured into that condition. It is manufactured after we receive the order.

Q. Now, lumber similar to that or like that, planed on one
198 side and grooved as that is, would it, in your judgment, have passed beyond what is known in the trade as dressed lumber?

A. Yes, sir.

Q. Did you hear the protestant's Exhibit A?

A. Yes, sir.

Q. Would lumber described as the lumber is in that exhibit be known in the trade as having gone beyond what is termed dressed lumber?

A. It would, in my opinion; yes, sir.

Q. Would it be so regarded in the trade?

A. Yes, sir.

By Mr. TUCKER:

Q. How do you buy and sell that lumber?

A. We buy it rough.

Q. How do you sell it?

A. We sell it manufactured into that shape.

Q. In what form do you fix the price upon it?

A. Rough, with the cost of manufacturing it added.

Q. Do you sell it by the thousand feet?

A. Yes, sir.

Q. And that thousand feet is estimated in the rough condition; is that it?

A. Not always; sometimes we sell flooring and add half an inch to the face measurement of it.

Q. Is not that the equivalent of measuring it in the rough condition?

A. It is about that; yes, sir.

JAMES N. WILLARD, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Albany.

Q. Your business?

A. Proprietor of a wood-working establishment, commonly known as a planing and re-sawing mill.

Q. How long have you been in that business?

A. Ten years in Albany.

Q. Do you buy and sell lumber?

A. No, sir.

Q. What do you do with lumber?

A. Work it.

199 Q. Into what?

A. Different processes of flooring, novelty, ceiling, partition, wainscoting, &c.

Q. Where do you sell your lumber?

A. I don't sell lumber.

Q. You manufacture it to order?

A. No, sir; work lumber for other people; known as a custom mill; not interested in the purchase or sale of it at all; simply manufacture it, for people who buy it in the Albany market, into flooring, ceiling, &c.

Q. How many feet do you manufacture during the year?

A. Upwards of two millions and a half per month, twenty to twenty-five million feet per year.

Q. Are you familiar with the words dressed lumber as they were used in August, 1894, and prior thereto and up to the present time?

A. Yes, sir; in our market, the Albany market, New York City, New England, and New Jersey.

Q. What did dressed lumber designate in the trade, as far as you knew?

A. Lumber brought to an even thickness or surface.

Q. Well, will you state how lumber would be brought to an even thickness?

A. Manipulated through a surfacer.

Q. Will you look at Exhibit number 1 and state whether or not that lumber, prepared as that sample, has passed beyond what is known as dressed lumber, Exhibit 1?

A. That is not a piece of dressed lumber; that is a piece of flooring.

Q. Would that be known in the trade as flooring?

A. Yes, sir.

Q. At what point did it pass beyond dressed lumber?

A. Being tongued and grooved.

Q. Are you familiar with such lumber as would be indicated by Exhibit 19?

A. Yes, sir.

Q. Did you ever prepare lumber of that kind?

A. Yes, sir; millions of it.

Q. What is that known as?

A. Known as factory flooring.

Q. Has that passed beyond what is known as dressed lumber?

A. Yes, sir.

Q. Is it now adapted for some specific or special purpose?

A. Only one purpose.

200 Q. Have you heard read here the protestant's Exhibit A, in which the lumber in regard to which this protest was made was described?

A. Yes, sir.

Q. Would lumber prepared as specified here be known in the trade as having passed beyond what is known as dressed lumber?

A. Absolutely; yes, sir.

By Mr. TUCKER:

Q. You say that you are a wood worker; you do this work for other people?

A. Yes, sir.

Q. Are you paid by the thousand feet, or how are you paid for doing that?

A. In our market we are paid by the thousand feet and by the piece.

Q. Which generally?

A. We work about one-half; half our lumber is worked by the piece. Exhibit 1 we work wholly by the piece in our market.

Q. How do you work Exhibit 19?
A. We would work that by the thousand feet.
Q. How would the thousand feet be calculated?
A. Rough measurement to the mill.

PENDENNIS WHITE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?
A. Buffalo, New York.
Q. And your place of business?
A. North Tonawanda, New York.
Q. How long have you been in business?
A. In business myself about ten years, in the lumber business. Before that I worked about six years for other firms in the lumber business, making about sixteen years in all.
Q. What kinds of lumber business are you in?
A. Wholesale, buying and selling at wholesale.
Q. What kind of lumber?
A. White pine, spruce, poplar, white wood, North Carolina pine.
Q. Where do you buy your lumber?
A. We buy it in Michigan, Wisconsin, in North Carolina, some in Virginia, and some in New York State.
201 Q. Where do you sell it?
A. Pennsylvania, New Jersey, Delaware, New York State, and the New England States.
Q. What amount in thousand feet do you sell?
A. We will average in the neighborhood of twenty-five million; some years a little more, some less.
Q. Are you familiar with the term dressed lumber in these different localities in the lumber trade?
A. Yes, sir.
Q. Were you familiar in August, 1894, and prior thereto?
A. Yes, sir.
Q. And up to the present time?
A. Yes, sir.
Q. Will you state what is known in the trade as dressed lumber?
A. It has always been known to me, and classed by people that I have met, as lumber that has been dressed on one side or dressed two sides.
Q. Will you look at Exhibit 1 and state whether or not that would be known in the trade as having passed beyond dressed lumber?
A. Yes, sir; I should say it has, and so consider it.
Q. What would lumber like that exhibit be called in the trade?
A. Flooring.
Q. Look at Exhibit 19; are you familiar with lumber of that kind?
A. Yes, sir; we have handled some of it, but not very much.
Q. Do you know what it is?
A. Yes, sir; I know what it is from the little we have handled.
Q. What is it?
A. It is for heavy flooring and roofing, used in large factories or power houses, or places of that kind.

Q. Would lumber like that, planed on one side and grooved and cut to specific lengths, exceed or go beyond what is known in the trade as dressed lumber?

A. It certainly would, because I describe dressed lumber as being planed one side or two sides only. This has had more done to it.

Q. Have you heard read the protestant's Exhibit A?

A. Yes, sir; I have.

Q. Would lumber specified as it is in that exhibit be recog-
202 nized in the trade as having gone beyond what is known as dressed lumber?

A. Certainly, for the same reason that I call Exhibit 19 beyond dressed lumber.

By Mr. TUCKER:

Q. Do you have a mill?

A. No, sir.

Q. Just buy and sell lumber?

A. Buy and sell only.

Q. How do you buy and sell such lumber as this, Exhibit 1 and Exhibit 19?

A. We usually buy lumber in the rough and have it worked as we want to sell it.

Q. How do you sell it, that is, how do you reach the price at which you sell it?

A. Well, that depends. We sell it both by the thousand feet board measure, if that is what you want to know.

Q. Rough board measure?

A. Rough board measure and also so many cents apiece. There is certain lumber that sells for so much apiece.

Q. Do you sell rough lumber?

A. Yes, sir.

Q. Do you sell that the same way, do you, by the thousand feet?

A. And by the piece.

Q. You sell them both the same way?

A. Both the same way.

EVERIT C. BAKER, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Plattsburgh.

Q. Your business?

A. Lumber business.

Q. How long have you been in that business?

A. Thirty-six years.

Q. What kind of business are you in in the lumber business?

A. Wholesale and retail.

Q. Do you manufacture lumber?

A. We buy the lumber in the rough from the sawmills and manufacture it into flooring, ceiling, and whatever the market calls for.

Q. What amount of lumber do you deal in in the course of a year in feet?

203 A. Our mill has a capacity of twenty millions—twelve or fifteen millions an average now.

Q. What kind of mills have you?

A. Planing mills; substantially the same kind of mills as Mr. Millard's at Rouse's Point; we have five matchers, flooring machines, three surface machines, one molder, three or four sets of circle saws for resawing, &c.

Q. Were you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto, and at the present time?

A. I was.

Q. How was the term dressed lumber used; what did it designate?

A. As I understood it, and was understood in the trade to mean, lumber brought to a uniform thickness, either dressed one side or two.

By the CHAIRMAN:

Q. Do you mean by that planed, planed one or two sides?

A. One or two sides and brought to a uniform thickness.

By Mr. GIBSON:

Q. Will you examine Exhibit 1 and tell us by what name that was known to the trade at the time of the passage of the tariff act in 1894, and prior thereto and up to the present time?

A. I have always known it as spruce flooring.

Q. And was it so known in the trade?

A. Yes, sir; I have sold a great many boat loads of it.

Q. Has that passed beyond what is known as dressed lumber in the trade?

A. Yes, sir; it has.

Q. In what respect?

A. In that it has been tongued and grooved, or, as we call it, dressed and matched.

Q. Please look at Exhibit 19; have you had anything to do with lumber of that kind?

A. I made a floor for one factory at my mill; that is all I ever done with it; that I did as a special job, the same dimensions as that.

204 Q. Would lumber planed on one side and grooved as that is have passed beyond what is known in the trade as dressed lumber?

A. I think it would; yes, sir.

Q. Did you hear me read the protestant's Exhibit A?

A. I did.

Q. Would lumber described as it is in that exhibit be known in the trade as having gone beyond what is commonly and usually known as dressed lumber?

A. I think it would; yes, sir.

By Mr. TUCKER:

Q. You say you buy lumber in the rough?

A. Yes, sir.

Q. And you make it up into these other various things?

A. Some of it; some we sell again in the rough.

Q. So you buy and sell both in the rough and in this advanced condition, do you?

A. Yes, sir.

Q. You consider dressed lumber as what?

A. Dressed lumber is lumber that is planed to a uniform thickness, either one side or two.

Q. Suppose you get a uniform thickness after planing it one side, you call that dressed?

A. Yes, sir.

Q. Is the object of dressing to get a uniform thickness?

A. Yes, sir.

Q. Any other object?

A. Sometimes to lighten the freight; generally to get the uniform thickness.

Q. How is it bought and sold?

A. We buy our spruce lumber very largely by the piece, and sell it so.

Q. Ever buy and sell it by the thousand feet?

A. Yes, sir.

Q. A thousand feet, how computed?

A. Board measure.

Q. Rough board measure?

A. Yes, sir.

Q. Are you interested to keep out Canadian lumber in that shape or condition free?

A. Well, I am an American citizen.

Q. You don't want it to come in free of duty?

A. I voted against it.

205 Q. Are you a member of Congress?

A. I was in the legislature.

DAVID G. CRANE, called as a witness, and being duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. Burlington, Vermont.

Q. What is your business?

A. Lumber dealer and planing mill; manufacturing other articles besides.

Q. How long have you been in that business?

A. About thirty-six or thirty-eight years.

Q. How many feet of lumber do you deal in in the course of a year, on an average.

A. We run somewheres from fifteen to eighteen million.

Q. What kind of lumber business are you in?

A. Buying and selling.

Q. And manufacturing?

A. Manufacturing.

Q. Have you planing mills?

A. I have.

Q. Will you just describe the kinds of mills you have and the number?
A. We have a planing mill and also a box shop.
Q. Will you tell what you do in those respective mills?
A. We manufacture boxes in part of them and we dress lumber in part of them; we make clapboards in them.
Q. What do you make in your planing mills?
A. We plane and manufacture lumber.
Q. For what purposes?
A. For the market.
Q. What kind of lumber do you manufacture?
A. Both spruce and pine.
Q. Into what?
A. Into flooring and roofing and car siding and sheathing; all kinds, as it is ordered.
Q. Are you familiar with the words dressed lumber as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto and up to the present time?
A. I think I am.
206 Q. How were the words dressed lumber used, and what did they designate in the trade?
A. Lumber dressed one or two sides.
Q. Look at Exhibit number 1; has lumber which has been worked as that has—has it passed beyond what is known in the trade as dressed lumber?
A. I should say it had.
Q. Would lumber of which that is a sample be known by any particular name in the trade?
A. It would be known as flooring.
Q. Look at Exhibit 19; are you familiar with lumber of that kind?
A. I am.
Q. Well, lumber such as that, when it has been planed on one side and grooved—would it have passed beyond what is known in the trade as dressed lumber?
A. I should say it had.
Q. What is that known in the trade as?
A. Factory flooring and roofing.
Q. And would lumber such as that be ordinarily kept in stock, or would it be usually manufactured for a particular order?
A. I don't think anyone keeps it in stock.
Q. You have heard read here the protestant's Exhibit A?
A. Yes, sir.
Q. And the description of the lumber therein?
A. Yes, sir.
Q. Would lumber prepared as it is described here be regarded in the trade, or known in the lumber trade, as having passed beyond what is known as dressed lumber?
A. I should say it was.

By Mr. TUCKER:

Q. Is all this stuff lumber that you have been talking about?
A. Yes, sir; I should say it was.

Q. Would you consider these terms, flooring, sheathing, &c., which you say you make in your mill—would you consider those descriptive terms subordinate to the term lumber?

A. That is a name they order by.

Q. Is it all lumber?

A. Of course it is lumber.

Q. Simply descriptive of a kind of lumber?

A. Yes, sir.

207 Q. Or a condition of lumber?

A. A condition of working of it, mostly.

Q. You have pretty large mills?

A. We have a fair mill; there are bigger ones.

Q. Are you interested to keep out this Canadian lumber free?

A. I think I am. If I said I was not I don't think anybody would believe me.

Q. How do you buy and sell lumber in that condition?

A. I buy it surface measure and face measure; that is, the board measure.

Q. You mean the rough-board measure?

A. Yes, sir.

Q. That is the way you buy and sell rough lumber?

A. Yes, sir.

Q. Just the same?

A. Yes, sir.

ELMER O. LAKE, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. What is your business?

A. Lumber dealer and manufacturer.

Q. Where?

A. St. Johnsbury, Vermont.

Q. How long have you been in the lumber business?

A. About fifteen years.

Q. What amount do you handle in the course of a year?

A. About ten million.

Q. Do you manufacture lumber?

A. Yes, sir.

Q. Or work lumber?

A. Yes, sir.

Q. Do you have a planing mill?

A. Yes, sir; we have one.

Q. Are you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the tariff act of 1894, and prior thereto, and subsequent?

A. Yes, sir.

Q. Will you state what kind of lumber is designated in the trade as dressed lumber?

A. I understand, and it is generally understood in the trade, that lumber surfaced or planed one or two sides was considered as dressed lumber.

208 Q. Examine Exhibit 1; has lumber prepared as Exhibit 1 passed beyond what is known in the trade as dressed lumber?

A. Yes, sir; I think so.

Q. In what respect?

A. It is tongued and grooved.

Q. Is that known by a particular name in the trade?

A. Yes, sir; it is known as flooring.

Q. Look at Exhibit 19; have you made or dealt in lumber of that kind?

A. Yes, sir.

Q. What is that known as?

A. Factory plank, roof plank.

Q. And used for what purpose?

A. It is used for factory floors and factory roofing.

Q. Would lumber prepared as that, planed on one side and grooved, be known in the trade as having passed beyond what is known as dressed lumber?

A. Yes, sir.

Q. You heard read the protestant's Exhibit A and the description of the lumber specified therein?

A. Yes, sir.

Q. Would lumber described as this has been in this exhibit be recognized and known in the trade as having gone beyond what is known as dressed lumber?

A. Yes, sir.

THOMAS F. STRONG, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. What is your business?

A. I am the assistant manager of the Skillings, Whitney and Barnes Lumber Company, Ogdensburgh.

Q. You reside there?

A. Yes, sir.

Q. How long have you been in the business?

A. Twenty years.

Q. You have the general managing of their business?

A. I have the general managing at Ogdensburgh, under Mr. Proctor, the general manager.

Q. What kind of lumber business are they engaged in?

A. Lumber, rough lumber, and manufactures of rough lumber.

209 Q. What is the general extent and character of your business or connection with this firm; what do you do?

A. Oh, I look after the filling of the orders directly; look after the sale agents and directly look after our export business.

Q. Are you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto and up to the present time?

A. Yes, sir.

Q. How were the words dressed lumber used, and what lumber did it designate in the trade?

A. It meant boards or plank or deals that were planed on one or two sides, to bring the same to an even thickness.

Q. Will you examine Exhibit 1?

A. Yes, sir.

Q. What is lumber prepared similar to that known as in the trade?

A. Known as spruce flooring.

Q. Would lumber prepared as that be considered in the trade as having passed beyond what is known as dressed lumber?

A. Yes, sir.

Q. In what respect?

A. In the respect that it has been tongued and grooved.

Q. Look at Exhibit 19?

A. Yes, sir.

Q. What is that known in the trade as?

A. It is known in the trade as factory roofing or flooring.

Q. Would lumber like that, when planed on one or both sides and grooved, be considered in the trade as having passed beyond what is known in the trade as dressed lumber?

A. Yes, sir.

Q. Have you mills in your concern?

A. Yes, sir; two of them.

Q. Are you familiar with the kind of work they do?

A. Yes, sir.

Q. State what mills you have and what they do?

A. We have two mills, eleven machines in one of them, fifteen probably in the other; we make flooring, sheathing, ceiling, boxes and surface lumber or dress lumber. These machines are known as single surfacers, double surfacers, flooring machines; we run band saws, big circular saws and flooring machines and box machines; and then
210 we have double edgers that prepare lumber to go to the machines like that Exhibit 15. When we make piazza flooring, like Exhibit 15, we have no lumber in our yard suitable to put immediately through the machine and make it, we put a siding board, run it to the double edger, rip that board up into four inch strips, and what is good from the board goes into that high grade piazza flooring; it is done so as to avoid the sap and get hard lumber suitable for an outside piazza flooring.

Q. Do these machines that you have mentioned require different classes of skilled workmen to run them?

A. Yes, sir; the man who runs the large flooring machine gets more money than the man who runs the surfacer, because it requires a more skilled laborer; the machine is worth more money and has to be kept in better repair; we could not afford to allow one of our machines to break, because we run our mills constantly through the year.

Q. Does the work of tonguing and grooving add to the expense?

A. It does; the machines cost more, the man who runs them costs more, it costs more to belt them up, it costs more to keep them in order, the knives cost more.

Q. You have heard here the protestant's Exhibit A?

A. Yes, sir; several times.

Q. Lumber such as is described and specified in this exhibit—state if it would be known in the lumber trade as having passed beyond what is known as dressed lumber?

A. It would.

By Mr. TUCKER:

Q. About what is the extent of the business of your corporation per annum?

A. The business at Ogdensburgh runs around one hundred and twenty-five million.

Q. Has the company branch offices in Tonawanda and Buffalo?

A. Yes, sir.

Q. Do they have mills there?

A. They have a mill in Burlington, indirectly; the company don't own the mill in Burlington, but the manager, D. W. Robinson, does.

211 Q. Skillings, Whitney, and Barnes are practically the controllers of that mill?

A. No; it is an individual mill.

Q. What interest do they have there?

A. In Burlington?

Q. Yes, sir.

A. We have about a million feet of lumber in our yard; we have a yard in Burlington and a yard in Tonawanda.

Q. You are interested in all those places?

A. Yes, sir.

Q. Do you keep lumber on hand?

A. In Ogdensburgh we don't mean to keep one foot of planed lumber in stock; if we do, it is an accident.

Q. How about the other places?

A. I don't know; I have nothing to do with the business in Burlington or Tonawanda.

Q. Is the Skillings, Whitney and Barnes Company a corporation?

A. They are, under the laws of Massachusetts.

Q. Are you interested in that corporation?

A. I am.

Q. As a stockholder?

A. Yes, sir.

Q. Do you consider that it is against the interests of that company to have lumber from Canada in this condition come in free of duty?

A. Most decidedly. I might add that perhaps the older members of it are rich enough to retire, but the younger members are most intensely interested.

Q. That is, these Canadian fellows interfere with you?

A. Most decidedly.

By Mr. SPRATT:

Q. It is destroying it, is it not?

A. Most decidedly; it would close every planing mill on the border.

By Mr. TUCKER:

Q. You lived through it last year?

A. We had a pretty hard time of it.

Q. You say you do not keep any of this lumber in stock?
212 A. We only keep it as an accident; if they mill out some lumber and it overruns the carload, we have something left over.
Q. Do you sell this lumber in Ogdensburgh there?
A. We don't bother with the retail trade.
Q. Do you sell anywhere?
A. Oh, we sell our own men a little hemlock.
Q. You sell to somebody, don't you?

By the CHAIRMAN:

Q. Do you receive orders at Ogdensburgh?
A. Certainly.

By Mr. TUCKER:

Q. You take orders and sell large quantities?
A. Yes, sir; it comes through our agents.
Q. Is it paid for in Ogdensburgh?
A. No, sir.
Q. Where is it paid for?
A. In Boston.
Q. Do you know in what way it is measured?
A. We measure everything in our mills after it is planed—after it is planed, not before; that would be measured there on the face, and a half an inch was allowed for the tongue, making it four inches.
Q. That is equivalent, isn't it, to measuring it in the rough measure?
A. I don't so consider it; I don't consider that we get within a great many thousands of feet of the measure after it is milled that they put into the mill.
Q. Do you think more than half an inch is lost?
A. A lot of it goes in edgings to the poor people all around the city; we give it to them. In fact, half of the poor people of the place are supported by the refuse of the mills.

OSCAR C. MILLER, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?
A. Newport, Vermont.
Q. Your business?
A. Lumber business.
Q. How long have you been in it?
A. Since 1862.
213 Q. Do you buy and sell lumber?
A. Yes, sir.
Q. You have a mill?
A. Yes, sir.
Q. What do you manufacture in your mill?
A. We have three different mills, two in the States and one in Canada. Spruce and hemlock is our principal lumber; some hard woods.
Q. How many feet do you manufacture or deal in in the course of a year, on an average?
A. It will run from twenty to twenty-five million.

Q. Do you manufacture any lumber in Canada?
A. Yes, sir.
Q. And import it into the country?
A. Yes, sir.
Q. How much do you manufacture there?
A. From three to five million.
Q. What kind is it?
A. Spruce and hemlock there, and some hard woods.
Q. Were you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto and at the present time?
A. I think we used the term planed more than we did dressed.
Q. You regard those two terms as synonymous?
A. I do; yes sir.
Q. How was the term dressed lumber used, and what kind of lumber did it designate in the trade at the times I have specified?
A. No; for instance, for our hemlock we used it invariably planed hemlock, and spruce the same, planed; unless we do more work to it, why then we add another term.
Q. Look at Exhibit 1, if you please. Has lumber prepared as that exhibit passed beyond what was known in the trade at the times I have stated as dressed lumber?
A. That is what I considered as planed and matched—that is, it is dressed, and then it is still further manufactured by being matched or tongued and grooved, which is one and the same thing.
Q. Is it known as some particular class in the lumber trade?
A. Lumber in that width or in the narrow widths with us is termed flooring.
Q. That is spruce, is it?
A. Yes, sir.
214 Q. Look at Exhibit 19. Do you know what that lumber is?
A. Yes, sir.
Q. Have you ever seen it prepared that way in spruce?
A. Yes, sir; I have prepared millions of it.
Q. In spruce?
A. Yes, sir.
Q. Take spruce lumber in those dimensions, cut into specific lengths and dressed on one side and grooved like that, what would it be known as?
A. Factory flooring or roofing.
Q. And in the condition in which I have described it would have passed beyond what is known as dressed lumber?
A. It would be planed and grooved; it is planed, and the grooving is an addition.
Q. Would it be known in the trade as having passed beyond dressed lumber?
A. Yes, sir; if you see the words planed and dressed alike it would, because it is planed and more than planed—planed and grooved.

By Mr. TUCKER:

Q. You say that you understand the term planed and the term dressed as being synonymous?

A. As meaning one and the same thing as applied to lumber.

Q. Has the term dressed, as applied to lumber, a general, broad significance?

A. Well, I am inclined to think it has, in the same sense that you use the word lumber.

Q. That is, all this stuff is lumber still, after all this work has been done to it?

A. When we are in the woods cutting logs, we are in our lumber camps—in our lumber woods.

Q. You send men up into the woods and call them lumbermen?

A. Yes, sir.

Q. They go up there to cut the trees?

A. Yes, sir.

Q. The word dressed, as applied to lumber—I ask you whether or not, in your experience in trade in 1894, the word dressed, as applied
215 to lumber, was broad the same as this word lumber in its broad significance?

A. When you get down to business, this word dressed can be stretched considerably. Now, I use the term dressed and planed one and the same as applied to lumber. Take this Exhibit 19. This surfacing is planing or dressing the outer or lower surface; then the edges, you are doing more to it.

Q. As a matter of fact, a matter of practical fact, the object of that planing on that side, that surface, is to smooth it and to bring it to an even surface, isn't it?

A. Yes, sir; so as the plank will all be an even thickness.

Q. Now, the purpose of that is to fit that for some use, isn't it?

A. Certainly. You mean on this sample?

Q. Exactly.

A. Yes, sir.

Q. Now, then, if you leave those sides plain and have them jointed, the reason for that is to fit it for some use, isn't it?

A. Yes, sir; it is not an uncommon occurrence for us to have orders for the edges jointed instead of grooved.

Q. The object of the two is the same, isn't it?

A. Yes, sir.

Q. So that it will make a tight joint, isn't it?

A. Yes, sir.

Q. Now, when you come to groove it, isn't that the same purpose, to fit it for some use?

A. Certainly.

Q. Now, when you come to tongue it. Take that Exhibit 1 there; that is tongued; that is to fit it for some use, isn't it?

A. Yes, sir.

Q. Then is not this surfacing or planing and the tonguing and the grooving or the joining, isn't that all for the one purpose of fitting it for some use?

A. Yes, sir.

Q. Then isn't it all included in the term dressed?

A. Well, that is a question which I think these gentlemen want to decide.

Q. What do you think about it. You are a lumberman, in
216 business twenty-three years; they need to decide it on the testimony of just such a gentleman as you are.

A. They have got it.

Q. From your experience in the business, was it in 1894 included in the general term of dressed?

A. I claim it is dressed, and it is still more than dressed; there is more work than simply dressing. Simple dressing is a small proportion of finishing up lumber in the different uses it is up to already in that one piece—Exhibit 19—even.

Q. Now, you have said that these sorts of lumber—for instance, Exhibit 19—has the term of factory flooring or roofing, and Exhibit 1 has the term of flooring?

A. Yes, sir; in narrow widths.

Q. Now, whether or not you recognize the terms flooring, sheathing, and are they analogous terms as applied to lumber, as descriptive of some of the different kinds of dressed lumber, from your experience in the business?

A. Certainly; they all represent some kinds of lumber.

Q. Whether or not you recognize the terms flooring, sheathing, and are they analogous terms applied to lumber, as descriptive of some of the different kinds of dressed lumber, from your experience in the business; do they represent some kinds of dressed lumber, using the term dressed in its broad sense, as you have said it may be applied?

A. Certainly, in the broad sense it does. I will agree with that; but there is a question in my mind whether you don't use more terms to express them all. For instance, this Exhibit 1, you have dressed it and you have matched it, you have planed it and matched it, as I have said before. There is another, Exhibit 23, planed, matched, beaded, and center beaded.

Q. I ask you whether or not this lumber, all of it, is sold by the thousand feet?

A. Yes, sir.

Q. In the rough measure?

A. Yes, sir.

Q. That is the way you sell rough lumber, isn't it?

A. Yes, sir.

Q. It is all lumber, is it not?

A. Yes, sir; there are different terms for lumber.

217 D. W. ROBINSON, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where is your residence?

A. Burlington, Vermont.

Q. Your business?

A. Lumber business.

Q. How long have you been in it?

A. I have been in Burlington thirty-one years.

Q. What kind of lumber business?

A. General lumber business.

Q. What is the amount of your dealings per year in feet?

A. What do you mean—our firm as a whole, or merely the Burlington part?

Q. Your Burlington branch.

A. From fifteen to thirty millions.

Q. Have you mills there?

A. Yes, sir.

Q. What do you manufacture in those mills?

A. I manufacture lumber in its various forms—moldings, casings, floorings, ceilings, roofing—what is used in the general lumber business, building.

Q. Were you familiar with the words dressed lumber as used in the lumber trade at the time of the passage of the tariff act of 1894, and prior thereto?

A. I think so.

Q. How were the words dressed lumber used, and what lumber would be designated by that as known in the trade?

A. I understand lumber surfaced one or two sides, brought to a thickness.

Q. Look at Exhibit 1 and state whether lumber prepared as that has been is prepared beyond what is known as dressed lumber in the trade.

A. I so understand it.

Q. And it is so recognized in the trade?

A. I so understand it.

Q. What is that lumber?

A. A piece of spruce flooring.

Q. Do you deal in that kind of lumber?

A. Yes, sir.

Q. Look at Exhibit 19.

A. Yes, sir.

218 Q. State what designation that has in the trade.

A. Factory flooring or roofing.

Q. Lumber prepared like that, has been surfaced on one or both sides and tongued and grooved; would it be considered in the trade as having passed beyond what is known as dressed lumber?

A. I so understand it.

Q. Would it be considered as lumber fitted for some special or particular purpose?

A. Some particular purpose. I don't think it is ever kept in stock by any retail lumber firm.

Q. Would lumber be so prepared only on some special order?

A. That has been our experience.

Q. Have you made much of that lumber?

A. Yes, sir.

Q. Have you heard read here the protestant's Exhibit A and the lumber described in that exhibit?

A. I have.

Q. Would lumber prepared as described in this Exhibit A be known generally in the trade as having passed beyond what is known as dressed lumber?

A. Yes, sir.

By Mr. TUCKER:

Q. You have said that you had a mill or a place of business at Burlington and some other places?

A. Well, I am a stockholder in the Skillings, Whitney and Barnes Lumber Company, and am the Burlington manager.

Q. Did you hear Mr. Strong's testimony here about the interest of the Skillings, Whitney and Barnes Lumber Company to keep this Canadian lumber out?

A. Yes, sir.

Q. Do you agree with him?

A. I don't see why I should not.

Q. I will ask you something similar to what I did Mr. Miller. You heard those questions?

A. Yes, sir.

Q. What is the purpose of smoothing the outer surface?

A. To get it to a thickness.

Q. What else?

A. Smoothing the surface.

219 Q. Yes, the top part there.

A. I don't know of any other purpose.

Q. Don't it put it into a little better shape?

A. Of course it is in a better shape.

Q. Is it not in better shape for many uses?

A. Of course.

Q. Is it for the purpose of fitting it for some purpose?

A. Yes, sir; partially.

Q. Supposing you joined the edges—what is the purpose of that?

A. To make it into a casing.

Q. Do you mean Exhibit 19?

A. I am talking about Exhibit 13.

Q. I am asking about Exhibit 19.

A. We never dress any lumber that way, sir.

Q. Then you don't know anything about that?

A. No, sir; never dressed any three-inch plank like that.

Q. Look at Exhibit 1; what is the purpose of smoothing that surface?

A. To bring it to a thickness.

Q. Any other purpose?

A. Fit it for a flooring.

Q. It is better, of course, to have a smooth side for flooring than it is to have it rough?

A. Yes, sir.

Q. What is the purpose of putting on those sides there—tonguing and grooving?

A. To keep the flooring down, I suppose. What do you mean?

Q. What is the purpose of putting that on?

A. To manufacture that for an article of commerce known as flooring.

Q. Is that the only purpose?

A. That is the only purpose I know of.

Q. Is it or is it not the purpose to fit that for a particular purpose, that is, to wit, a flooring, just the same as you smooth it?

A. Yes, sir; of course.

Q. Supposing you jointed it instead of that, what would that be?
A. In some sections we dress flooring that way.
Q. That is, you do dress it in that way?
A. We work it that way.
220 Q. What is the difference between dressing and working?
A. Working is generally considered to be the whole process of lumber when it is completed.
Q. Now, Mr. Robinson, about this word dressed; isn't it a pretty broad term?
A. It may be considered by some people as a broad term; seems to be to-day.
Q. How do you consider it?
A. I consider it as applied to lumber dressed to a thickness; it is a broader term than I supposed it was when I came down.
Q. This is all lumber—continues to be lumber?
A. It is manufactured lumber.
Q. Well, how is it bought and sold?
A. Bought and sold as lumber.
Q. By the thousand feet?
A. By the thousand feet.
Q. As a general thing?
A. As a general thing. In some cases it is sold by the piece in some markets.
Q. That measure is by the rough measure, isn't it?
A. Generally, yes, sir.
Q. Is it or is it not, from your experience in the business, and was it in 1894, included within the term dressed lumber, subject to those various other subdivisions and subdescriptions which have been testified here as flooring, sheathing, &c.?
A. I don't so understand it.

THOMAS S. QUINN, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:
Q. Where do you reside?
A. Brooklyn.
Q. What is your business?
A. Lumber business.
Q. How long have you been in that business?
A. Thirty years.
Q. How are you engaged in it, in what way?
A. As manager of the Export Lumber Company.
Q. Where?
A. They cover New York and various points.
221 Q. What amount of lumber do you deal in in the course of a year?
A. One hundred and fifty to two hundred millions.
Q. Are you familiar with the words dressed lumber, as used in the trade, in the lumber trade, at the time of the passage of the tariff act in 1894?
A. Yes, sir.

Q. How were they used and what lumber did the words dressed lumber designate?

A. You ask for my understanding of it?

Q. In the trade.

A. Well, I understand all dressed lumber to be lumber that is surfaced one or two sides to a uniform thickness for an indefinite purpose or use.

Q. Look at Exhibit 1 and state whether or not that would be known in the trade as having passed beyond what is commonly known as dressed lumber.

A. Yes, sir; I am of the opinion that it has passed beyond the standard of what is known as dressed lumber.

Q. Look at Exhibit 19, that large piece there in front of you. Have you dealt in lumber of that kind?

A. Yes, sir.

Q. Do you know what it is known as?

A. I do, sir.

Q. What is it known as in the trade?

A. As factory roofing or flooring.

Q. Would lumber like that, dressed one side or both and grooved, be known in the trade as having passed beyond what is recognized as dressed lumber?

A. As it is intended for a definite purpose, I should consider it manufactured lumber.

Q. Have you heard read the protestant's Exhibit A?

A. No, sir; I did not.

Q. I hand you protestant's Exhibit A. Look over that exhibit and state whether or not lumber described as that lumber is would be recognized and known in trade as dressed lumber.

A. As the description of the preparation of it appears in these memoranda, I believe it to be a manufactured article, intended to enter
222 in as a component part of the production or construction of buildings, and is just as much a manufactured article as doors, windows, sashes, or blinds.

By the CHAIRMAN:

Q. Has it passed beyond the condition of lumber known as dressed lumber?

A. Yes, sir.

By Mr. TUCKER:

Q. What is the business of the Export Lumber Company, of which you say you are the manager?

A. In the buying and selling of lumber.

Q. In the United States?

A. And Canada.

Q. From the term export we should understand that the business was to export it, send it out of the country. Is that correct?

A. That is correct, sir.

Q. Still you say you buy and sell lumber in the United States and Canada?

A. Yes, as the export business is only part of our business.

Q. Do you buy lumber for export in Canada?
A. Yes, sir.
Q. In what condition do you buy that lumber?
A. Both rough and dressed.
Q. What is the condition of it when you buy it dressed?
A. It is prepared in a manner that is indicated by our orders.
Q. In what manner?
A. Any way we order it.
Q. In what way do you order it?
A. Sometimes as planed one side, tongued and grooved; other times sheathing, shelving; other times surfaced on two sides, to save freight.
Q. That you ship out of the country?
A. Some of it.
Q. Do you ship it on orders from foreign countries when you do ship it?
A. We receive orders from representatives *of* correspondents of foreign countries who reside here.
Q. In those orders how are those goods described?
A. It is described to us, if they want it as flooring, they call especially for flooring.
223 Q. What other description is attached to it besides flooring?
A. The size only, 1 by 4, the width, the thickness.
Q. And what else?
A. The market appellation, flooring, sheathing, shelving.
Q. Are there any other descriptive words applied to it?
A. I don't recall that there would be, unless——
Q. Are there any letters or figures?
A. There would be the sizes.
Q. About what is to be done to it, whether to be dressed or planed on one side or two sides?
A. They indicate they want planed flooring, one side tongued and grooved, or two sides tongued or grooved, if they want it.
Q. That is part of the description of it, is it not?
A. No, sir.
Q. Isn't it always there on the papers?
A. Not necessarily.
Q. Well, if it is, what is it there for?
A. They will order, of course, what they want, planed on one side.
Q. What are those figures and letters put on for?
A. Indicate the width, thickness, and what is to be done to it. We know what is to be done with it if they say they want a flooring planed one side.
Q. Do you ever have an order which is simply flooring planed one side?
A. Frequently.
Q. With no other words or figures attached to the order?
A. I say we frequently have orders for 1 by 6, which would indicate the size flooring, planed one side or two sides.
Q. Sometimes, when they want it tongued and grooved, they say so, do they?
A. Not in our export business, they don't; they do in our domestic, to distinguish it from joining it.

Q. Is the Export Company interested in any lumber mills in the United States?

A. Indirectly they are.

Q. Is the Export Lumber Company in any way connected with the Skillings, Whitney & Barnes Lumber Company?

A. Not in any way.

224 Q. Do you buy lumber of them?

A. Yes, sir. I want to qualify that by saying that there is a member of the Export Company who is a stockholder in the Skillings, Whitney & Barnes Lumber Company.

Q. Is it, as you view it, to the interest of the Export Company, of which you are the manager, to prevent this Canadian lumber coming in free of duty?

A. To the Export Lumber Company as a company it is a great advantage to have it come in.

Q. How long has this Export Lumber Company been in existence?

A. As the Export Lumber Company, seventeen years.

Q. Were you engaged in the lumber business before that time?

A. Yes, sir.

Q. What was the class of your business then?

A. I was then the buyer and inspector and outside man for W. R. Grace & Co., also a lumber concern.

Q. Does what you have said in relation to this matter of dressed lumber apply to the time when you were with W. R. Grace & Co.?

A. Decidedly.

Q. Continued all the time since?

A. Yes, sir.

Q. How is this lumber like Exhibit 1 and Exhibit 19 bought and sold?

A. By the thousand feet.

Q. Rough measure or not?

A. Depending altogether on the trade. Some people buy it on the laid measure, which is net measure, the prices figured according, to cover the waste; in other instances, in the rough.

Q. Does the Export Lumber Company deal in rough lumber, too?

A. Yes, sir.

Q. Bought and sold in the same way—by the thousand feet?

A. Yes, sir.

JAMES D. MCLAURIN, called as a witness, and being first duly sworn, testifies as follows:

By Mr. GIBSON:

Q. Where do you reside?

A. In Mount Vernon, New York.

Q. What is you' business?

A. Lumber business.

225 Q. How long have you been in that business?

A. Seventeen years.

Q. What is the extent of your business in feet, about, a year?

A. One hundred and fifty to two hundred millions.

Q. Do you buy and sell lumber?

A. I am the New York manager for the Skillings, Whitney & Barnes Lumber Company, and we buy and sell lumber.

Q. Are you familiar with the words dressed lumber, as used in the lumber trade at the time of the passage of the tariff act of 1894, and previous thereto?

A. Yes, sir.

Q. How was the term dressed lumber used, and what lumber did it designate, as known in the trade?

A. It applied to lumber which was planed one or two sides.

Q. Examine Exhibit 1 and state whether or not that would be known in the trade as having passed beyond the point of dressed lumber.

A. It has.

Q. What work on it would take it beyond that?

A. Matching it, tonguing and grooving.

Q. Examine Exhibit 19; are you familiar with lumber of that kind?

A. Yes, sir.

Q. Spruce lumber of that size, width, and thickness and from 6 to 11 inches in width and cut to some specified length, beaded and grooved, as that is, would it be known to the trade as having passed what is known as dressed lumber?

A. Certainly.

Q. Would it be designated for some particular purpose?

A. Yes, sir.

Q. What would it be known as in the trade?

A. Factory flooring or roofing.

Q. Have you heard read the protestant's Exhibit "A"?

A. I have.

Q. And the description of lumber therein indicated?

A. Yes, sir.

Q. Would the lumber as designated in that exhibit have passed beyond what is known as dressed lumber in the trade?

A. Yes, sir.

Testimony closed.

226 And afterwards, and on the 17th day of December, A. D. 1895, lumber exhibits, numbered from 1 to 29 inclusive, were filed in said cause.

And afterwards, and on the 27th day of December, A. D. 1895, the application of Frank Dudley, for the taking of further evidence in said cause was duly filed, which said application and the order of court entered thereon are in the words and figures following:

U. S. circuit court, district of Vermont, in the matter of certain merchandise imported into the port of Newport by Frank Dudley.

In the above-entitled cause now comes Frank Dudley, and applies for an order of this court referring it to one of the United States General Appraisers, as an officer of the court, to take and return to the court such further evidence in the matter as may be offered by him.

FRANK DUDLEY,
By C. A. PROUTY, *Attorney.*

227 And afterwards, and at the February term, A. D. 1896, of said court, said cause was entered "with the court."

And afterwards, and on the 23d day of March, A. D. 1896, the United States general appraiser's return of further evidence was filed in said cause, which said evidence is in the words and figures following:

Circuit court of the United States, district of Vermont, No. . Frank Dudley, petitioner, for review of a decision by the Board of United States General Appraisers.

Return of further evidence by J. B. Wilkinson, jr., general appraiser.

In pursuance of the order of the court, made in the above entitled cause, requiring the undersigned, as an officer of the court, to take additional evidence therein, I hereby certify that upon due notice to the parties interested the testimony hereunto annexed and returned was duly taken before me on the 11th day of March, 1896, at Boston.

The witness was first duly sworn and thereupon interrogated by counsel, all of which is now returned according to said order.

J. B. WILKINSON, Jr.,
General Appraiser.

228 *Testimony taken before General Appraiser Wilkinson, under order of said court, March 11, 1896, due notice having been given to parties interested.*

BOSTON, MASS., *March 11, 1896.*

Present: C. A. Prouty and Josiah P. Tucker, esqs., for petitioner. Daniel Magone and Edward L. Strong, esqs., appeared for the United States attorney for the district of Vermont by virtue of a letter from him dated Montpelier, Vt., March 3, 1896, to Mr. Magone, in which he says: "If the hearing is in Boston or New York I may not be present, but I shall rest assured that the interests of the Government will be fully protected by yourself and Mr. Strong." (Signed) John H. Senter, U. S. attorney.

General Appraiser Wilkinson having notified U. S. Attorney Senter of this time and place of taking this testimony, and the said U. S. General Appraiser Wilkinson having received a letter from U. S. Attorney Senter suggesting this date and consenting to this place for the taking of this testimony, the testimony was taken.

Examination of WALTER F. FORD (residence, Boston, Mass.):

Direct examination by Mr. PROUTY:

Int. 1. What is your business, Mr. Ford?

A. I am in the lumber business.

Int. 2. And how long have you been in that business?

A. Now, I have got to think, I am growing old—twenty-three years.

Int 3. What has been the character of your business? I mean by that, what kind of lumber have you handled?

A. We handle all kinds of lumber.

229 Int. 4. How extensive is that business?

A. At the present time?

Int. 5. Yes.

A. It is rising; 50,000,000 feet surely; I don't know just what it amounts to.

Int. 6. Whether, in the course of that business, you have become familiar with the use of the different terms employed in the lumber traffic and by lumbermen?

A. I have; yes, sir.

Int. 7. You may state, Mr. Ford, what general classes lumber is divided into—the most general division?

A. Are you asking now for grades or terms that are used, or what?

Int. 8. I am asking now for the general division of lumber with respect to its condition of manufacture?

A. Well, we sell——

Mr. MAGONE. Pardon me. He has asked you a specific question, and it will facilitate matters very much if you will answer it. He asks you to tell him what the classes are.

The WITNESS. I should say such as are in kind, uppers, selects——

Int. 9. You are speaking now of subdivisions. I want to know if there are two general divisions with respect to the condition of manufacturing?

A. Yes, sir.

Int. 10. And what are they?

A. We have rough lumber and we have dressed lumber.

Int. 11. That is what I want to get at. What do you mean by rough lumber?

A. Lumber that is in the rough.

Int. 12. And that lumber is as it comes from what machine?

A. As it comes from the sawing machine.

Int. 13. And what do you mean by dressed lumber?

A. Lumber that is put through a dressing or planing machine.

Int. 14. What kind of a machine do you say that lumber is dressed in?

A. There are such names as surfacer and double surfacer and jointer and a general planer.

230 Int. 15. Would the term "planing machine" include all these different machines?

A. Yes, sir.

Int. 16. What do you mean by a single surfacer?

A. A machine that planes one side of a board.

Int. 17. And a double surfacer would be what?

A machine that planes two sides of a board.

Int. 18. Is there a machine which planes one or both sides of a board and the edges at the same time?

A. Yes, sir.

Int. 19. And what would that machine be called?

A. I should call it a dressing machine.

Int. 20. Now, referring to the general class of rough lumber, you may state whether that is subdivided into other classes?

A. Of rough lumber?

Int. 21. Of rough lumber.

A. Yes, sir; there are terms used in rough lumber such as scantling, joists, plates, sills, stringers, rafters, floor joists, and other terms.

Int. 22. You may state now what these different terms indicate?

A. They indicate the purposes which lumber of suitable sizes and quality are put to.

Int. 23. For instance, what do you mean by floor joists?

A. A piece of spruce, or it may be hemlock, or it may be pine, on which the boards of a floor are laid.

Int. 24. That is, it is a piece of lumber intended for that purpose?

A. Yes, sir.

Int. 25. What do you meam by a rafter?

A. That is a piece of lumber that is put from the ridge-pole to the upper plate—supposed to be for the support of the roof.

Int. 26. And so on with all these other names that you have given?

A. Yes, sir.

Int. 27. You may state whether these different kinds of rough lumber are ever cut to exact lengths for the purpose of being used in particular places?

A. Very largely. We get out the lumber for framing to exact lengths.

Int. 28. That is to say, you would receive an order for the
231 frame of a particular house or a particular building——

A. We receive the order for the frame of a particular house just exact, according to the lengths and sizes desired to be put together.

Int. 29. Referring now to such an article as fence boards, is there a term in the trade known as fence boards?

A. Yes, sir.

Int. 30. Now, what is a fence board?

A. It is a board which can be used, and which is commonly used, to stretch between posts set so far apart for fencing purposes.

Int. 31. How long is a fence board?

A. Usually 16 feet.

Int. 32. And why is it cut 16 feet long?

A. Because the posts are set 8 feet apart.

Int. 33. Take the boards with which the outside of a house is covered preparatory to clapboarding, would those boards be cut to exact lengths?

A. They are very liable to be.

Int. 34. And for what reason?

A. The custom has grown from the requirements of the trade, and a board is more salable if of exact dimensions as regards length of the requirements of the carpenter.

Int. 35. And you understand that the purpose in cutting it to exact length is to enable the carpenter to nail it onto the joists without further preparation?

A. That is the intent; yes, sir.

Int. 36. Now, referring to the general division of dressed lumber, you may state whether there are similar subdivisions there.

A. We have what is known as sheathing, ceiling, partition, casing, etc.

Int. 37. And what do those different terms signify?

A. They signify largely the purpose for which that lumber is largely used.

Int. 38. For instance, ceiling is used for what purpose?

A. It is used for the ceiling of rooms.

Int. 39. And flooring is used for what purpose?

A. For the flooring of rooms.

Int. 40. A considerable part of this importation consisted of spruce boards 3 and 4 inches wide, from 10 to 15 feet long, planed and
232 matched or tongued and grooved, and I think it was called flooring; would that lumber be suitable for flooring?

A. Yes, sir.

Int. 41. Are you familiar with that lumber in your business, Mr. Ford—that kind of lumber?

A. You do not say what it was. What was it—spruce?

Int. 42. Spruce, I intended to say.

A. Yes; we have it.

Int. 43. You may state how that lumber is dressed; what is done to it in order to dress it.

A. It is put through a machine which at one and the same time planes the surface and makes the tongue and groove on the edge of the board. I understood you it was planed on one side?

Int. 44. Yes; planed on one side. You say that is all done at one operation?

A. Yes, sir.

Int. 45. Is lumber which is known by other names than flooring, and which is substantially like this, prepared in the same way?

A. Yes, sir.

Int. 46. What is the quality of the lumber that is ordinarily used for flooring?

A. That admits of a wide range, or quite a wide range, with us. It can be a board—I prefer to explain it that it is a board which, after it is laid, shows a fairly smooth surface—smooth, I mean, as regards knots or other imperfections.

Int. 47. Well, now, Mr. Ford, if you were to take a log run of spruce of this width and run it through the same machine at the same time, would it be true that part of it would sort out into flooring and part of it sort out into a poorer quality of lumber, which would be culled and used for some other purpose?

A. Yes, sir.

Int. 48. Will you state what that other poorer quality of lumber would or might be used for?

A. It would be used for boarding in or enclosing or covering or under-flooring purposes.

Int. 49. I wish you would state now the different uses that lumber dressed in the same manner that this flooring was dressed can be put to; or, to make my question more definite, state the uses that this identical flooring could be put to.

A. Beside laying a floor?

233 Int. 50. Beside laying a floor.

A. You could put it on the sides of a building for enclosing, on the roof for covering in; you could put it for a partition upright as between two rooms; you could build a coal bin with it, or anything—any such purposes as that which needed tight work.

Int. 51. Is lumber prepared in that way used for all those purposes?

A. Yes, sir.

Int. 52. A part of this importation was what is known as factory flooring or factory roofing, and it consisted of planks from 2 to 3 inches thick, 6 to 10 inches wide, and 10 to 16 feet long. Are you familiar, Mr. Ford, with that kind of lumber?

A. Yes, sir.

Int. 53. You may state how that lumber is prepared or dressed.

A. That is put through the machine and the surface of the lumber and the edges—I did not understand you whether the edges were grooved and tongued——

Mr. TUCKER. They were tongued and grooved.

The WITNESS. The process is just the same; it is put through the machine at one and the same time and the surfaces and edges are prepared.

Int. 54. Now, what is that lumber used for?

A. It is commonly used for the flooring and roofing of factory buildings—in factory construction, or what is known as mill construction.

Int. 55. Is that ordinarily cut to exact lengths?

A. Yes, sir.

Int. 56. And for what purpose?

A. So that the carpenter in laying it can lay it right down without any additional labor on his part, so far as cutting the ends or squaring the ends is concerned.

Int. 57. How is that lumber bought and sold—I mean by what measure?

A. By the thousand feet, board measure.

Int. 58. Mr. Tucker inquires whether it would be rough measure?

A. Yes, sir; we always measure everything as in the rough.

234 Int. 59. Now, how is the planed and matched lumber that you have been speaking about bought and sold?

A. By the thousand feet, board measure.

Int. 60. Would you say, Mr. Ford, that both these articles, namely, the planed and matched boards and the factory flooring and roofing, were what is ordinarily termed dressed lumber?

A. Yes, sir.

Int. 61. You may state whether in your observation you have observed any difference in the use of the word "planed" and the word "dressed" in different parts of this country.

A. Well, if there is a difference, it has grown more similar, I think, of late years. My impression is that, say two years ago and more, the term out West was dress one side, dress two sides, dress three sides, dress four sides, whereas here it would be plane one side, plane two sides, plane three sides, plane four sides.

Int. 62. Do you say that at the same time here and West the term "dress" also had the broad significance of including all these different processes?

A. Yes, sir.

Int. 63. Now, Mr. Ford, why do you say that?

A. My experience leads me to say that.

Int. 64. Now, looking to the literature of the trade, if a lumber dealer advertised these different kinds of lumber, what term would he use?

A. I don't quite gather your meaning.

Int. 65. If a lumber dealer, a man who dealt in rough lumber and also in these different kinds of subdivisions of what you call dressed lumber, like ceiling and flooring and sheathing, were to advertise his wares, would he use any general term which included all the subdivisions?

A. My experience has been that he advertises that he has got rough lumber and that he has got dressed lumber, and in his dressed lumber he calls for such features as ceiling, sheathing, etc.

Int. 66. That is, you mean he includes those under the general term?

A. Yes, sir.

235 Int. 67. What would he include under the general term "rough lumber?"

A. Either fine, common, uppers, selects, etc.

Int. 68. Are there mills in this country which are operated for the purpose of dressing lumber?

A. Yes, sir.

Int. 69. Now, when they issue a circular to the trade, what general term do they use to denote all these different processes?

Mr. STRONG. I think that was passed upon at the hearing as incompetent, if I remember correctly.

Mr. PROUTY. I had understood from Mr. Tucker, who was present at the hearing, that the admission of the circular was passed upon as incompetent, but it occurs to me that he ought to have the right to state the reason why he says what he does.

Mr. STRONG. We object, first, that it is incompetent; second, it is immaterial; and third, it is not the best evidence of the fact, if the fact is material, that the circular itself and not his recollection of what it contains would be the best evidence.

Int. 70. You understand, Mr. Ford, that I am not speaking of any one circular; I am speaking of your general observation.

A. The circulars which we receive do not call for rough lumber and dressed lumber.

Int. 71. You may state whether you have ever seen the term "manufactured lumber" applied to lumber which had undergone these different processes, until since this controversy arose?

A. I never did.

Int. 72. Have you seen the terms used since that?

A. I have; yes, sir.

Int. 73. And whether the same man who used the term "dressed lumber" before the controversy began has since then used the term "manufactured and dressed lumber?"

236 Mr. STRONG. The same objection. This can not be material in any sense.

A. Yes, sir.

Mr. STRONG. Now, I ask that it be stricken out.

The APPRAISER. I have no power to rule on that.

Int. 74. Is there a lumberman's code?

A. There are two or three, I think.

Int. 75. You may state whether in these codes the term "dressed lumber" includes these other subdivisions?

A. Yes, sir.

Mr. STRONG. I object, on the ground that the code is the best evidence of what it contains, and that his evidence is not material or competent.

Int. 76. Have you either of these telegraphic codes here?

A. No, sir.

Cross-examination by Mr. MAGONE:

Cross-int. 77. Mr. Ford, give me your age, if you please.

A. 40 years.

Cross-int. 78. Is your business carried on now through a firm or corporation?

A. Firm.

Cross-int. 79. When was the firm formed?

A. In 1879; the firm of Ford & Godfrey.

Cross-int. 80. And is that the title of the firm now—Ford & Godfrey?

A. Yes, sir.

Cross-int. 81. And what is the name of Mr. Godfrey?

A. Lester N. Godfrey.

Cross-int. 82. And where is his residence?

A. In Milton.

Cross-int. 83. Massachusetts?

A. Yes, sir.

Cross-int. 84. Have you had, during that time, any other partner?

A. No, sir.

Cross-int. 85. So that comprises the partnership?

A. Yes, sir.

Cross-int. 86. Did you ever do any business at the Northwest with your lumber?

A. Do you mean, do we buy in the Northwest?

237 Cross-int. 87. No; I mean did you ever sell any lumber in the Northwest?

A. No, sir.

Cross-int. 88. In any of the Northwestern States?

A. No, sir.

Cross-int. 89. In any of the Southwestern States?

A. No, sir.

Cross-int. 90. Do you know anything about their use of the word "planed" or "dressed" other than hearsay?

A. Yes, sir; we receive circulars.

Cross-int. 91. I asked you if you had any knowledge on the subject except hearsay?

A. None at all.

Cross-int. 92. How long did you, if ever, work in a sawmill?

A. I never worked in a sawmill.

Cross-int. 93. Did you ever, at any time in your life, conduct the business of dressing lumber?

A. No, sir.

Cross-int. 94. Do you know from what the word is derived?

Mr. TUCKER. I object.

A. What word is it?

Cross-int. 95. The words "dressed lumber" is what we were discussing.

A. Well, if you want me to confine my answer to yes or no, I shall have to say no, although I might qualify it.

Cross-int. 96. I do not care for the qualification. Do you know anything about how many machines a board goes through after it is cut into what you call "mill run"—which do you call it, mill run or log run?

A. I did not call it.

Cross-int. 97. I thought you called it the log run. Now, what do you mean by log run?

A. I did not use the word; Mr. Prouty used it.

Cross-int. 98. Answer me, if you know. Do you understand the meaning of the word "log run?"

A. I think I do; yes, sir.

Cross-int. 99. What does it mean?

A. It means the run of the log as to quality.

Cross-int. 100. Does it have any reference whatever to thickness or width?

A. None at all, to my knowledge.

238 Cross-int. 101. Whatever you mean by "log run," you would cut the log, if you were a sawyer, into the class of lumber into which it was best adapted?

A. It means the quality, or all qualities combined in that log.

Cross-int. 102. If you get it cut in the sawmill—you cut it up into different thicknesses?

A. Yes, sir.

Cross-int. 103. And almost invariably into different widths?

A. Yes, sir.

Cross-int. 104. Is that right?

A. Yes, sir.

Cross-int. 105. If you wanted to make flooring what would you do?

A. I should take it to the parallel edger, square the board, take it to the machine which is sometimes called a dressing machine, sometimes called a planing machine, and run it through there.

Cross-int. 106. Would you do that without any reference to its width?

A. Oh, yes; unless my orders specified the width.

Cross-int. 107. You would do it without reference to the width?

A. Yes, sir.

Cross-int. 108. If you wanted to fill an order as for flooring, then you would cut it—rip it and cut it to the right width?

A. If my specification called for it.

Cross-int 109. You said you would do it that way unless you had an order——

A. I said if my specification said so.

Cross-int. 110. Assuming you had no specifications, then if you got an order for flooring the next step or process would be to rip the boards until you got them to a uniform width, would it?

A. Either rip them or side them.

Cross-int. 111. Tell me what you mean by siding.

A. I should call ripping a board taking a board and cutting it in two.

Cross-int. 112. Supposing you take off four inches, would you call that ripping it?

A. It would depend on how wide the board was.

239 Cross-int. 113. Suppose the board was 8 inches wide?

A. I should call it ripping.

Cross-int. 114. If it was 12 inches wide?

A. I should call it ripping.

Cross-int. 115. If it were 16?

A. I should call it ripping.

Cross-int. 116. You said the first thing was to square and straighten it, didn't you?

A. Yes, sir.

Cross-int. 117. Now, if you wanted to make it into clapboards, you would make them differently?

A. Clapboards do not come from the saw at all.

Cross-int. 118. What, then?

A. A clapboard is not made that way; a clapboard is not made from lumber.

Cross-int. 119. Now, is a piece of joist ordinarily called lumber?

A. Yes, sir.

Cross-int. 120. Are clapboards ordinarily called lumber?

A. They are usually called clapboards.

The APPRAISER. There is a difference between his understanding and yours. What I call clapboards are ordinarily rived or split, and these are what you call clapboards, and he is calling these weather boards that go on houses clapboards. I think you have got a misnomer.

Cross-int. 121. Where do you stop in the size and class the lumber as timber.

A. 6 x 6, 8 x 8; sizes like that we call timber.

Cross-int. 122. Or over that?

A. Or over that.

Cross-int. 123. Whether they are sawed or hewed?

A. It does not make any difference.

Cross-int. 124. Now, when you get a log and cut it into pieces equal to 6 inches square or larger, you would call that timber?

A. Yes, sir.

Cross-int. 125. And less sizes than that you call lumber?

A. Less than that we call joists, plates, all sorts of names.

Cross-int. 126. I understand you. Now, when you come down to flooring, don't you call it flooring?

A. If it is manufactured into a certain shape and a certain quality, we call it flooring.

240 Cross-int. 127. If it is of a certain quality and width and grooved and tongued to the size ordinarily used for flooring, you would call it flooring?

A. Flooring.

Cross-int. 128. Now, you said it was sometimes used for other purposes. Did you mean that?

A. Yes, sir.

Cross-int. 129. Now, assuming first it is flooring, according to your idea, and good material, what is it ordinarily used for?

A. Flooring.

Cross-int. 130. And it would be an exception if it was used for ceiling, would it not?

A. Yes, sir.

Cross-int. 131. And if it was used for the foundation roof or floor lining, would you not think it very extraordinary to use flooring for such a purpose?

A. Your question is all the time supposing that the grade is there?

Cross-int. 132. What is your answer?

A. Yes, sir; but——

Cross-int. 133. It would be an extraordinary use of it. When you spoke of "dressed" lumber in one section of the country and as "planed one side or two sides?"

A. As early as I went into the lumber business.

Cross-int. 134. All your life you have heard it spoken of so?

A. Yes, sir.

Cross-int. 135. If a man wrote to you that he wanted a carload of dressed lumber and said nothing else, what would you do?

A. I should ask him what he wanted.

Cross-int. 136. If he asked you for a carload of planed lumber, it would be the same answer, would it not?

A. Yes, sir.

Cross-int. 137. Then you understand, in the ordinary language of your business, that dressed lumber would be covered by the word "planed" ten years ago?

A. Planed lumber.

Cross-int. 138. Yes; and that it might be planed on one side or two sides?

A. Or three sides or four sides; yes, sir.

241 Cross-int. 139. That is what you understand?

A. Yes, sir.

Cross-int. 140. And you would understand it was also brought to an even thickness, would you not?

A. Yes, sir.

Cross-int. 141. Is it not a common class of lumber in the market, and has it not been for the last ten years—lumber planed on one side and lumber planed on two sides and planed on four?

A. All sorts of dressed lumber have been common in this market for years.

Cross-int. 142. How are they classed?

A. As dressed.

Cross-int. 143. That would imply only planed?

A. That would imply the different shape they went into after they came through the planing machine.

Cross-int. 144. If a man wrote you for planed lumber, would you send him planed or grooved?

A. I would not send him one edge planed; I would ask him what he wanted.

Cross-int. 145. Would you say the same of molding?

A. Your supposition is incomprehensible to me; I should see what was wanted.

Cross-int. 146. You would not know what he meant by it?

A. Why, no.

Cross-int. 147. In every instance when you want to get out the work, you would have the man state specifically what he wanted?

A. Yes, sir.

Cross-int. 148. Now, for what other purposes could you use such lumber as about three inch thick spruce and planed on one side—I mean by that, bringing it to an even thickness and grooving for splines?

A. I could use it for almost any purpose, such as—I could make a sidewalk; I could use it for the joists; I could use it for the floor joists; I could do lots of things with it.

Cross-int. 149. Did you ever see lumber prepared in that way used for a sidewalk; yes or no?

A. No, I never saw it used for a sidewalk.

Cross-int. 150. Did you ever see it used for any of the purposes you have stated now?

A. Yes, sir.

242 Cross-int. 151. Which of them?

A. The floor joists part of it.

Cross-int. 152. Was it a case where they could not get joists?

A. Yes, sir.

Cross-int. 153. In an exigency?

A. Yes, sir.

Cross-int. 154. Now, if I told you I had a carload of planed lumber, what would you understand?

A. I should not understand what you had to offer me.

Cross-int. 155. And it would be the same if I told you I had a car of dressed lumber?

A. I should not understand it.

Cross-int. 156. You would understand the terms to be synonymous?

A. I should understand the lumber was dressed in some way, but what it was you had to offer me I should not understand.

Cross-int. 157. You said that this lumber was culled after it was sawed from the log; that is invariable, is it not—that is, it is separated into the classes into which it belongs?

A. Yes, sir.

Cross-int. 158. You cull them, as you said in speaking to Mr. Prouty?

A. I don't know that I used the word.

Cross-int. 159. He used the word, and you used it in replying to him.

A. I do not recollect using the word "cull;" I should call it sorting.

Cross-int. 160. It is sorted?

A. Yes, sir.

Cross-int. 161. And if it needs culling by reason of circumstances, if in sorting it has not been well classified, then it is culled; is that it?

A. I don't know that.

Cross-int. 162. What do you mean by culling?

A. I do not use the word.

Cross-int. 163. Not at all?

A. No, I do not use it; we call it sorting.

Cross-int. 164. Do you know the meaning of "culling" lumber? That is all I ask.

A. No.

Mr. TUCKER. I think I will object to that. The witness has told you that he does not use the word "culling," and I do not see any

243 reason in asking him if he knows what it means when he has told you he does not use it.

Cross-int. 165. Did you ever sort lumber yourself?

A. Oh, yes.

Cross-int. 166. Now, what is the process of sorting with you?

A. The making of grades.

Cross-int. 167. I will understand you perfectly if you say grading it.

A. Grading it.

Cross-int. 168. Putting lumber of a particular grade together?

A. Yes, sir.

Cross-int. 169. Sorting it from a better or poorer grade?

A. Yes, sir.

Cross-int. 170. And putting into what you call a correct class?

A. Yes, sir.

Cross-int. 171. Did you, at any time in your life, have anything to do with running a planer?

A. No, sir.

Cross-int. 172. Do you know the difference between a planer and a planing machine for planing and tonguing and grooving; you said it was done at about one and the same time. I want to know if you mean that?

A. You have just asked me the question if I knew the difference between a planer——

Cross-int. 173. And a machine that will plane and tongue and groove, or if it can be done by the same machine?

A. It can.

Cross-int. 174. Did you ever see it done?

A. Yes, sir.

Cross-int. 175. And it is done at the same time?

A. Yes, sir.

Cross-int. 176. Without passing into other machines?

A. Yes, sir.

Cross-int. 177. Where did you see that done?

A. In a great many places.

Cross-int. 178. Tell me one; I have never seen one.

A. I should say in Saginaw——

Cross-int. 179. Any one place that you can now name near by?

A. I have seen it in Boston in various mills; in Paul's planing mill.

244 Cross-int. 180. Where is it located?

A. Up on Albany street.

Cross-int. 181. In Boston?

A. Yes, sir; I have seen it on Harrison avenue, in Driscoll's planing mill.

Cross-int. 182. Where, in this city?

A. Yes, sir; I have seen it in a mill down here at the North End.

Cross-int. 183. Now, will you tell me whether the board did not pass through the planer before it passed through the machine for planing and grooving?

A. It did not.

Cross-int. 184. You mean it was done simultaneously?

A. Yes, sir.

Cross-int. 185. As it was moved along?

A. Yes, sir.

Cross-int. 186. Now, were those boards cut to equal width before they were put in there?

A. No, sir.

Cross-int. 187. And you can tongue and groove with this machine boards of unequal width?

A. Yes, sir.

Cross-int. 188. Right along?

A. Yes, sir.

Cross-int. 189. And plane them at the same time?

A. Yes, sir.

Cross-int. 190. How wide a board can they tongue and groove and plane at the same time?

A. The machines are made of different capacities, but, generally speaking, say up to 12 or 14 inches.

Cross-int. 191. And from that down to 3 inches?

A. Yes, sir.

Cross-int. 192. Now, in preparing moldings, how do you do?

A. They are usually put through what is known as a molder or molding machine.

Cross-int. 193. Is that a different machine?

A. Yes, sir.

Cross-int. 194. Is it a more expensive machine?

A. I can not tell you about that.

Cross-int. 195. (By Mr. STRONG.) You are not a manufacturer?

A. No, sir.

Cross-int. 196. Just a retailer?

A. I am a wholesaler.

245 Cross-int. 197. (By Mr. MAGONE.) This word you said you never heard, the word "dressed," until when?

A. I did not say that, Mr. Magone.

Mr. PROUTY. He did not say that.

Mr. MAGONE. I heard him state it this way, that he never heard the words "manufactured lumber," and I was going to ask him about it. I suppose this was substantially manufactured lumber.

Cross-int. 198. Is the spline made at a separate time—the spline must be made separate from the groove?

A. The spline is a separate thing entirely.

Cross-int. 199. It is made to a size, so that you can drive it in?

A. So that you can drive it into these two grooves.

Cross-int. 200. The principal object in grooving both sides is to save lumber?

A. Also to avoid skrinking, the spline, being in both grooves, can not shrink. It is not like the tongue, which is in only the one groove, and likely to shrink.

Cross-int. 201. And liable to be broken?

A. It makes a more perfect—what you might say a more compact floor.

Cross-int. 202. It does both things, and is a saving of good lumber?

A. It is a saving of lumber, and also makes you an additional tongue, as you might say.

Cross-int. 203. It gives you a tongue on both sides?

A. Yes, sir.

Cross-int. 204. (By Mr. STRONG.) Mr. Ford, what is a planer and matcher?

A. What is it?

Cross-int. 205. What kind of a machine is a planer and matcher?

A. Well, I have commonly heard it called a dressing machine.

Cross-int. 206. I do not mean what you have heard it called. What kind of a machine is it; will you explain that?

A. I am not a mechanic; I could not; I could give you a general idea.

Cross-int. 207. We want to know what it does.

246 A. What does it do? It planes one surface, makes a tongue on one side and a groove on the other side of whatever substance goes through it.

Cross-int. 208. In making a flooring of a certain width, you have to adjust your knives according to the width of your floor, do you not?

A. Exactly.

Cross-int. 209. These machines are more expensive than ordinary planing machines, are they not?

A. The attachment, I think, comes extra.

Cross-int. 210. And requires more skill, perhaps, to run them?

A. I should not say so; no.

Cross-int. 211. But more care?

A. Yes, sir.

Direct examination resumed:

Int. 212. (By Mr. PROUTY.) You have spoken of timber. Do you understand timber is included in the general term "lumber?"

A. Yes, sir.

Int. 213. General Magone has asked you whether you would not regard it as a remarkable thing if flooring was used for an under floor. I understand you to say that lumber dressed in exactly that same way would be used for an under floor, and that whether it would be used for a top or under floor is determined by the grade of the lumber?

A. Yes, sir; in other words, it would be a waste of material and money to put down the quality of floor boards for an under floor.

Int. 214. Have you ever bought lumber in the Northwest?

A. Yes, sir.

Int. 215. You said, Mr. Ford, that there were several telegraphic codes. I ask you if that is one of the telegraphic codes [book shown to witness]?

A. Yes, sir.

Int. 216. Now, won't you refer to the page in that code which treats of dressed lumber?

Cross-int. 217. (By Mr. MAGONE.) When was the book made?

A. 1885.

Int. 218. (By Mr. TUCKER.) Who was it published by?

A. W. B. Judson.

Int. 219. Where?

A. Chicago, Ill.

Int. 220. What is the title of it?

A. The Lumberman's Standard Telegraphic Code.

247 Cross-int. 221. (By Mr. MAGONE.) Does it say where it is printed?

A. Chicago. "The Northwestern Lumberman," W. B. Judson, publisher.

Mr. PROUTY. Now, we will offer this book, marked "Exhibit X," in connection with Mr. Ford's testimony, and we offer a portion of page 108 and pages 109 and 110.

Mr. STRONG. We object, on the ground that it is incompetent and immaterial.

Int. 222. (By Mr. PROUTY.) I call your attention to page 108, Mr. Ford, and inquire if you find on that page the term "dressed lumber?"

A. Yes, sir.

Int. 223. And what is included on that page and the next two pages under that term?

A. Ceiling, flooring, partition, siding, ship-lap.

Cross-examination resumed:

Cross-int. 224. (By Mr. MAGONE.) You did answer me with reference to dressed lumber, if a man sent for an order, that you would return it to have him specify what it was. Is that right?

A. Yes, sir.

Cross-int. 225. And this book; if the man sent you, under this heading, for a car of dressed lumber, you would not send it to him until you got further information and knew what class he wanted. Is that right?

A. Yes, sir.

Cross-int. 226. (By Mr. STRONG.) Whether he wanted ceiling, or flooring, or basing?

A. Yes, sir.

Cross-int. 227. If he did order flooring or basing, you would know what he wanted?

A. Yes, sir.

Direct examination resumed:

Int. 228. (By Mr. PROUTY.) Suppose a man sent you an order for a carload of flooring, would you know what he meant by that?

A. No, sir.

Int. 229. Suppose he sent you an order for a carload of partition, would you know what he meant by that?

A. I would not dare to send him anything, simply because it was ordered that way.

248 Int. 230. But flooring would be a little more definite than dressed lumber?

A. Yes, sir.

Cross-examination resumed:

Cross-int. 231. (By Mr. MAGONE.) You would feel perfectly warranted in sending him what he ordered if he asked you for certain flooring, if he told you what he was doing?

A. As a matter of fact, I would not send him anything.

Cross-int. 232. On account of caution?

A. It would not do; I should not do it.

Statement of General Appraiser WILKINSON:

It is agreed on the part of both parties in this case that the descriptions of the exhibits, as made in the questions and answers heretofore given, are true descriptions of the merchandise imported, so far as referred to.

Mr. STRONG: And that the importations, although of different lengths, 10 to 16 feet, were of a specific length, so many pieces of so many lengths, as to the fact of the roofing.

Direct examination resumed:

Int. 233. (By Mr. TUCKER.) Mr. Ford, Mr. Magone has asked you if you had an order for a carload of dressed lumber what you would send, and you have replied to his question. I would like to ask you if you had an order for a carload of rough lumber what you would send.

A. I would not send anything; I would ask him what he wanted.

Int. 234. Is not the expression or description "carload of rough lumber" just exactly as indefinite as the expression "carload of dressed lumber?"

A. Yes, sir.

Int. 235. And neither are sufficiently distinct to be understood in a mercantile or commercial way?

A. No, sir.

249 Cross-examination resumed:

Cross-int. 236. (By Mr. MAGONE.) You know perfectly well in your business what rough lumber means?

A. Yes, sir.

Cross-int. 237. It means the lumber as it comes from the saw?

A. Yes, sir.

Cross-int. 238. And if I have understood you correctly, you do not know the meaning at all of "dressed lumber?"

A. Yes, sir.

Cross-int. 239. Well, what does it mean?

A. Lumber that has been dressed.

Cross-int. 240. In some way?

A. In some way.

Cross-int. 241. But rough lumber you know all about?

A. I know that it is rough, that is all.

Cross-int. 242. Rough, as it came from the saw?

A. Yes, sir.

Cross-int. 243. But if I say "dressed," you don't know what condition it is in, do you?

A. Yes; I should say that it had been dressed. If you will allow me to explain, rough lumber indicates to us as many different kinds of lumber as dressed——

Cross-int. 244. I did not mean that at all.

A. And that is simply the different kinds as they come, first from the saw and then from the planing mill; that is all it indicates.

And afterwards, and on the 6th day of May, A. D. 1896, an affidavit of E. L. Davis, as to correction of testimony, was filed in said cause; which said affidavit is in the words and figures following:

I, E. L. Davis, of Boston, Commonwealth of Massachusetts, stenographer, do on oath say that I acted as stenographer on the eleventh day of March last, in the matter of the evidence of Mr. Walter F. Ford, taken before United States General Appraiser Wilkinson, in the case of Frank Dudley, petitioner for review, pending in United States circuit court for the district of Vermont; that in Mr. Ford's answer to direct inter-
250 rogatory 70, in which, as transcribed to typewriting, Mr. Ford is reported to have said, "The circulars which we receive do not call for rough lumber and dressed lumber," a reexamination of my stenographic notes taken at the time leads me to say that the words "do not" in said typewritten answer should have been written "generally;" that the stenographic character used for "do not" and that used for "generally" is of the same general form, the latter being a little longer and at a slightly different angle from the former, and by examination of the context of Mr. Ford's testimony immediately preceding interrogatory 70 I am satisfied and confident that "do not" was an error and that the word "generally" should be in place thereof.

E. L. DAVIS.

BOSTON, MASS., *April 4th, 1896.*

There personally appeared before me the above-named E. L. Davis, to me personally known, and made oath that the above statement is true.

[L. S.] WILLIAM ODLIN,
Notary Public.

And afterwards, and on the same 6th day of May, A. D. 1896, said cause came on for hearing before the Honorable Hoyt H. Wheeler, judge of the United States district court within and for the district of Vermont, sitting in the circuit court.

And afterwards, and on the 19th day of May, A. D. 1896, the court handed down its decision in the said cause, reversing the classification of said merchandise; which said decision is in the words and figures following:

251 United States circuit court, district of Vermont.

FRANK DUDLEY }
vs. } At law.
UNITED STATES. }

WHEELER, J.:

The tariff act of 1894 provides for a duty on:

"181. House or cabinet furniture, of wood, wholly or partly finished, manufactured of wood, or of which wood is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem."

And puts on the free list:

"Wood:

"672. Logs and round unmanufactured timber not specially enumerated or provided for in this act.

"673. Firewood, handle bolts, heading bolts, stave bolts and shingle bolts, hop poles, fence posts, railroad ties, ship timber and ship planking, not specially provided for in this act.

"674. Timber, hewn and sawed, and timber used for spars and in building wharves.

"675. Timber, squared or sided.

"676. Sawed boards, plank, deals, and other lumber, rough or dressed, except boards, plank, deals, and other lumber of cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods.

252 "677. Pine clapboards.

"678. Spruce clapboards.

"679. Hubs for wheels, posts, last blocks, wagon blocks, oar blocks, gun blocks, heading, and all like blocks or sticks, rough, hewn, or sawed only.

"680. Laths.

"681. Pickets and palings.

"682. Shingles.

"683. Staves of wood of all kinds, wood unmanufactured."

The appellant imported inch boards and three-inch plank, planed on both sides and tongued and grooved. The collector assessed a duty of twenty-five per cent on it as a manufacture of wood, under paragraph 181; the appellant protested that it was free, under paragraph 676; the Board of General Appraisers found, on the opinions of twenty-four witnesses out of forty-six examined by them, "that the merchandise is not commercially known as dressed lumber, but has passed beyond that description by the processes of tonguing and grooving, which are additional to dressing," and affirmed the classification of the collector. The testimony of another witness to the contrary has been taken since.

That this material is still lumber and is bought and sold by the thousand feet, as lumber, as nearly all of the witnesses agree; that it is not akin to the articles of wood mentioned in paragraph 181 is quite apparent. That paragraph expressly refers to house or cabinet furniture of wood, wholly or partly finished; and then to manufactures of wood without reference to the extent of finishing, thereby implying that these are referred to as finished. Manufactures of wood are articles made of wood and completed into things different from what the wood of which
253 they are made was before. (Hartranft vs. Wiegmann, 121 U. S., 609; Maddock vs. Magone, 152 U. S., 368.) Paragraph 676 does not refer either to sawed lumber or to dressed lumber by itself, but after naming sawed boards and plank, which the two kinds of this importation are, it mentions other lumber, rough or dressed, which must mean, as lumber is divided into two classes, rough and dressed, all other lumber, whether rough or dressed. This is lumber dressed for use, and has not been made into anything beyond lumber so dressed. Articles used for kindred purposes and which are completed things, having names of their own, and which would not be included under the general head of lumber, are expressly placed on the free list in this schedule, indicating an intention that all these should be free.

Neither sawed or dressed lumber is usually dealt in by those names, but by what it is wanted for; so this is not a question of trade names,

but of what the material is. If it is dressed lumber in fact, it is free. (Robertson vs. Perkins, 129 U. S., 233.)

The finding of the Board of Appraisers, upon conflicting evidence, is entitled to great weight; but they did not have all the witnesses before them, and the evidence and their finding fall short of really showing that these are completed manufactures of wood. Passing them beyond dressed lumber by tonguing and grooving does not make them anything else.

Classification reversed.

C. A. PROUTY,
J. P. TUCKER,
For Appellant.

JOHN H. SENTER,
U. S. Attorney.

EDWARD L. STRONG,
DANIEL MAGONE,
For United States.

254 And afterwards, and on the 3d day of June, A. D. 1896, the United States filed its motion for an appeal to the United States circuit court of appeals for the second circuit, which said motion is in the words and figures following:

In the circuit court of the United States of America for the district of Vermont.

FRANK DUDLEY
vs.
THE UNITED STATES. } May term, 1896.

Now comes John H. Senter, United States attorney for the district of Vermont, and for said United States moves the court here to be allowed an appeal in said case to the United States circuit court of appeals for the second circuit.

JOHN H. SENTER,
United States Attorney.

And afterwards, and on the 15th day of June, A. D. 1896, the following order was entered on the docket of this court:

"Motion granted, appeal allowed, and citation issued, in court this 15th day of June, 1896."

255 And afterwards, and on the same 15th day of June, A. D. 1896, the United States filed its notice of appeal to the United States circuit court of appeals for the second circuit, which said notice is in the words and figures following:

FRANK DUDLEY
vs.
THE UNITED STATES.

UNITED STATES CIRCUIT COURT,
District of Vermont, ss:

Please take notice that the undersigned, United States attorney for the district of Vermont, on the part of the United States, hereby appeals

from the decision of this court, rendered herein and entered on the 19th day of May, A. D. 1896, to the United States circuit court of appeals for the second circuit.

Dated at Montpelier, Vermont, June 15th, 1896.

Yours, respectfully,

JOHN H. SENTER,
United States Attorney, District of Vermont.

To GEORGE E. JOHNSON, Esq., *Clerk.*
CHARLES A. PROUTY, Esq.,
Attorney for Frank Dudley.

256 And afterwards, and on the same 15th day of June, A. D. 1896, the United States filed its assignment of errors to the decision and judgment of the United States circuit court for the district of Vermont, which said assignment of errors is in the words and figures following:

United States circuit court of appeals for the second circuit.

THE UNITED STATES, APPELLANT,
vs.
FRANK DUDLEY, APPELLEE.

Assignment of errors.

The United States hereby assigns error to the decision and judgment of the circuit court of the United States for the district of Vermont in the following particulars:

1st. In that it decided, adjudged, and decreed that the decision of the United States general appraisers herein should be reversed, and that the merchandise herein is not manufactures of wood, and not dutiable at 25 per cent ad valorem under paragraph 181 of the tariff act of 1894.

2nd. In that it did not find and decide, as a matter of law and fact, that the merchandise involved herein was a manufacture of wood.

3rd. In that it did not find and decide, as a matter of law and fact, that the merchandise involved herein was not dressed lumber.

257 4th. In that it did not find and decide, as a matter of law and fact, that the phrase "dressed lumber" was limited, at the time of the passage of the act of 1884, to lumber planed or surfaced on one or two sides.

5th. That it did not find and decide, as a matter of law and fact, that when it had been advanced beyond that stage and fitted for a particular purpose, viz, flooring or roofing, it is a "manufacture of wood."

6th. That it decided, as a matter of law and fact, that the classification established by the collector of customs for the district of Vermont and the Board of United States General Appraisers was erroneous.

7th. That it did not decide, as a matter of law and fact, that the merchandise in question was correctly classified by the collector of customs and the Board of United States General Appraisers.

8th. In that it did not find and decide, as a matter of law and fact, that the term dressed lumber, at and prior to the passage of said tariff act, was a commercial term known to the trade dealing in the merchandise involved in this proceeding, and that the term dressed lumber was a

term well known to the trade and commerce of the United States at and prior to the date of the passage of said act, and had acquired such a definite and uniform commercial meaning and significance as to exclude the merchandise in question from the classification of dressed lumber; that the said merchandise had passed beyond the stage known as dressed lumber, within the common and commercial meaning thereof.

9th. That it did not in all things affirm the decision of the Board of United States General Appraisers.

258 10th. That in reversing the classification of the collector of customs and the Board of United States General Appraisers it did not take into consideration section 3 of said tariff act, or pass upon the question whether the merchandise in question should not have been classified under section 3 of the tariff act of 1894.

11th. That it did not find and decide, as a matter of law and fact, that the merchandise involved herein was an article manufactured in whole or in part, not provided for in the tariff act of 1894, except under section 3 of said act, and subject to duty under said section 3.

Dated at Montpelier, Vermont, June 15th, 1896.

JOHN H. SENTER,
United States Attorney for the District of Vermont,
In behalf of the United States, Appellant.

259 And afterwards, and on the same 15th day of June, A. D. 1896, a citation was duly issued out of this court, which was returned into court, with service duly accepted in writing thereon, on the 25th day of June, A. D. 1896, which said citation is hereto attached:

UNITED STATES OF AMERICA,
District of Vermont, ss:

To Frank Dudley, of Portland, in the district of Maine, greeting:

Whereas the United States has lately appealed to the circuit court of appeals for the second circuit from the judgment lately rendered in the circuit court of the United States for the district of Vermont in favor of you, the said Frank Dudley: Now, therefore, you are hereby cited to appear before the said circuit court of appeals, at the city of New York, on the fourteenth day of July next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Brattleboro, in the district of Vermont, on the 15th day of June, in the year of our Lord one thousand eight hundred and ninety-six, and in the year of the independence of the United States the one hundred and twentieth.

HOYT H. WHEELER, *Judge.*

(Endorsed:) Newport, Vt., June 15, '96. Due service of the within citation is acknowledged and accepted, and any other or different service waived. C. A. Prouty, attorney for Frank Dudley.

(Endorsed:) Returned with service accepted, June 25th, 1896. Geo. E. Johnson, clerk.

260 UNITED STATES OF AMERICA,
District of Vermont, ss:

I, George E. Johnson, clerk of the circuit court of the United States of America for the district of Vermont, in the second circuit, do hereby

certify that the foregoing pages, numbered from one to four hundred and nine, inclusive, contain a true and correct transcript of the record and proceedings had in said court in the case of Frank Dudley, plaintiff and appellee, against the United States, defendant and appellant, as the same remain of record and on file in said cause.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Burlington, in said district of Vermont, in the second circuit, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-six, and of the independence of the United States the one hundred and twentieth.

[SEAL.] GEO. E. JOHNSON, *Clerk.*

261 United States circuit court of appeals for the second circuit. October term, 1896. Appeal from the circuit court of the United States for the district of Vermont.

[Submitted February 1, 1897. Decided February 23, 1897.]

THE UNITED STATES, APPELLANT,
vs.
FRANK DUDLEY, APPELLEE. } No. 73.

Before Judges Lacombe and Shipman.

This is an appeal from a decision of the circuit court, district of Vermont, reversing a decision of the Board of General Appraisers which affirmed a decision of the collector of customs classifying certain importations for duty under the tariff act of August 28, 1894. The articles imported were boards and planks, each piece of a specified length, width, and thickness, planed on one side, and matched or grooved for splines. The collector classified some of the importations under paragraph 181 as "manufactures of wood not specially provided for," and others under sec. 3 as "articles manufactured in whole or in part, not provided for in this act." The importers claimed that their importations were free from duty under paragraph 676 as "lumber, dressed."

Per curiam. Inasmuch as the judges who heard this appeal are divided in opinion, the decision of the circuit court is affirmed.

John H. Senter and Edward B. Whitney for the appellant.

J. P. Tucker and C. A. Prouty for the appellee.

262 United States circuit court of appeals for the second circuit. Appeal from the circuit court for the district of Vermont.

THE UNITED STATES, APPELLANT,
v.
FRANK DUDLEY.

Petition for rehearing.

The United States respectfully petitions for a rehearing of the above-entitled cause, the appeal in which recently resulted in an affirmance by a divided court. This application is made at the request of the Secretary

of the Treasury, who writes to the Attorney-General under date of February 27, 1897, as follows:

"The Board of General Appraisers at New York reports that the amount involved in dressed-lumber protests now on file is $20,000. The president of the Board of General Appraisers recommends that an application be made for a rehearing, and, in view of the importance of the question, I concur in this recommendation."

The amount involved being so large, the Government would seem not to be justified in accepting a decision of this kind as final for the purposes of other suits. The present record has been elaborately and thoroughly prepared for the purpose of affording a test case. I am also informed that the obtaining of an early and final decision is important to many persons engaged in domestic industries whose business interests are dependent upon the settlement of this question.

I therefore respectfully request that the case be restored to the docket for rehearing and an early day set for that purpose.

EDWARD B. WHITNEY,
Assistant Attorney-General.

(Indorsed:) United States circuit court of appeals. Second circuit. Filed Mar. 19, 1897. James C. Reed, clerk.

263 (Endorsed:) Petition denied. E. H. L. United States circuit court of appeals. Second circuit. Filed Mar. 15, 1897. James C. Reed, clerk.

264 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 264 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The United States, appellant, versus Frank Dudley, appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 26th day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the said United States the one hundred and twenty-first.

[SEAL.] JAMES C. REED, *Clerk.*

265 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is appellant and Frank Dudley is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Vermont, and we, being willing for certain reasons that the said cause and the

record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the
266 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

267 (Indorsed:) Supreme Court of the United States. No. 795, October term, 1896. The United States vs. Frank Dudley. Writ of certiorari.

268 *To the honorable the Supreme Court of the United States:*

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, June 15, 1897.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

269 In the Supreme Court of the United States, October term, 1896.

THE UNITED STATES } No. 795.
vs.
FRANK DUDLEY. }

Stipulation as to return to rule.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the United States circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, may be treated as the return to the writ of certiorari issued herein.

HOLMES CONRAD,
Solicitor-General.
C. A. PROUTY,
Counsel for Respondent.

A copy:
[SEAL.] WM. PARKIN, *Clerk.*

270 (Indorsed on cover:) Case No. 16574. Term No. 365. The United States, petitioner, vs. Frank Dudley. Writ of certiorari and return. Supreme Court, U. S., October term, 1897. Filed June 23, 1897.

No. 103.

Brief of Atty. Gen. (Hoyt) for Appt

Office Supreme Court U. S.
FILED
APR 7 1899
JAMES H. McKENNEY,
Clerk.

Filed Apr. 7, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
FRANK DUDLEY. } No. 103.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
FRANK DUDLEY. } No. 103.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appellee imported from Canada into the United States, in June, 1895, eight carloads of boards and planks planed on one side and grooved or tongued and grooved. The collector assessed a duty of 25 per cent on the imports as a manufacture of wood under paragraph 181 of the tariff act of August 28, 1894, which is as follows:

> House or cabinet furniture of wood, wholly or partly finished, manufactures of wood or of which

wood is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem.

The importer protested, claiming that they should have been admitted free of duty as dressed lumber under paragraph 676 of said act, which provides for "sawed boards, plank, deals, and other lumber, rough or dressed." The Board of General Appraisers sustained the action of the collector, and the importer filed an application for review in the circuit court, which reversed the decision of the board. On appeal by the United States to the circuit court of appeals, where the case was heard by two judges, who were divided in opinion, the judgment of the circuit court was affirmed.

The case is brought before this court on writ of *certiorari*, the question to be determined being whether the importations were properly classifiable as "dressed lumber" under paragraph 676.

The articles were sawed boards or planks, and are described in the specifications (Rec., pp. 6–8) as being planed on one side and grooved, or planed on one side and "matched"—that is, tongued and grooved (p. 114), and some were "butted to exact lengths." They are prepared for use by a machine described by most of the Government witnesses as a "flooring machine" (pp. 71, 110, 116, 120, 125, 132, 135, 144, 149), which is a combination of a simple planing machine with a matching—or tonguing and grooving—machine. Some of the smaller mills use separate machines for planing and matching (p. 129), the combination machine appearing to be of comparatively recent origin (p. 26).

The forty-seven witnesses examined before the Board of General Appraisers were almost equally divided on the question whether lumber which was tongued and grooved as well as planed has passed beyond the term "dressed lumber," the Government witnesses confining the term to lumber that had been put through a planing machine, but had reached no further stage of manufacture, and was not intended for any particular purpose or use. The importer's witnesses gave a much broader meaning to the term "dressed," holding that lumber which had been planed, grooved, tongued, or beaded was still dressed lumber, even when in final shape for the carpenter to put together as flooring, roofing, ceiling, etc.; but it was admitted by witnesses on both sides that in ordering such articles the term "dressed lumber" would not sufficiently describe them, and they are usually ordered either by description or by their specific designation as flooring (pp. 20–21, 24–25, 28–30, 32, 46, 52, 91, 122). One of the Government witnesses, when asked how he would fill an order asking simply for dressed lumber, replied (p. 47):

> A. We would deliver it to them dressed one side and one edge or two edges, or with just facing, unless it was specified to the contrary if they wanted them dressed both sides.
>
> Q. You would not tongue or groove them unless they specified that?
>
> A. No, sir; we would face it and send it to them just faced one side; dressed lumber.

Another witness stated (p. 64):

> If a man sent me an order for dressed lumber, I would consider that anything planed on one side

> would fill the bill. * * * If a man sent me an order for dressed lumber, and I dressed and matched it, I think he would have good reason to kick.

It appears that after lumber has been planed on one or both sides, if it undergoes any further process it assumes some name such as sheathing, or base, or flooring (pp. 21, 24). The process of planing, tonguing, and grooving is usually all the work of one machine (pp. 116, 120, 130, 163, 173, 212), but is not done simultaneously. "It is done on the same machine, but after it is dressed it is passed on to the matcher, the tonguer, and the groover" (p. 110). Government witnesses stated that by the term "dressed" was understood the planing of lumber to an equal thickness, either on one side or two (pp. 114, 120, 133, 137, 138, 139, 141, 144, 145). The terms "planed" and "dressed" are used synonymously (pp. 16, 152).

ARGUMENT.

I.

THE IMPORTATIONS ARE EITHER MANUFACTURES OF WOOD, OR ARTICLES PARTLY MANUFACTURED NOT OTHERWISE PROVIDED FOR.

It was admitted by witnesses, both for the importer and for the Government, that the article as imported was ready for use by the carpenter and in condition to be laid down at once as flooring, or used as ceiling, without any further manufacture (pp. 21, 88, 101, 166). On this

point one of the importer's witnesses testified as follows (p. 101):

Q. What is that used for in its present state?

A. Flooring; it could be used for ceiling.

Q. Ordinarily, flooring?

A. Yes, sir.

Q. The only thing need to be done to that to make a flooring of it would be to butt it to the exact length and lay it down?

A. Yes, sir; it is ready to go on the floor as it is.

Q. When that was in the floor, and composed the floor, you would call it then dressed lumber?

A. Yes, sir.

Q. It would never change?

A. After it is once dressed it can not be put back in the rough state.

Q. You say it is all ready to make a floor?

A. Yes, sir.

Q. The only thing necessary to be done is for the carpenter to lay it down and drive a nail in it?

A. Yes, sir; he puts it down and planes it afterwards.

Q. That is simply to even it up?

A. Yes, sir.

Another witness for the importers, when asked to differentiate between manufactured lumber and dressed lumber, said (p. 39):

> I should call dressed lumber anything that would go through a machine and dress in any form in one machine or one process, and *manufactured lumber* would be, perhaps, lumber that is made into shooks or *cut for trim to a special length, so that it would be adapted without any further work upon it to put right into place.*

And another witness gave the following (p. 44):

> Q. Would you consider that Exhibit 2 manufactured wood?
>
> A. Yes, sir; it is manufactured the same as flooring is manufactured; * * * it is manufactured to a certain point.
>
> Q. You would consider that Exhibit 2 manufactured wood?
>
> A. Well, as I say, to a certain point; yes. It is not absolutely finished until it is cut into lengths.

It is not necessary, however, that the articles should be in final shape for the consumer.

In *United States* v. *Hathaway* (4 Wall., 404), where the article under consideration was "a quantity of white-ash timber, split in the form of pipe and hogshead staves at the place of importation," Mr. Justice Nelson said (p. 408):

> If it has undergone the process of manufacture, even in part, it is taken out of the free list.
>
> In the present case the article is prepared by splitting for the hand of the cooper in the manufacture of the pipe or hogshead, a process which has the effect to relieve him from much of the labor that would otherwise be required in adapting it to the use intended. It has already been reduced to the proper form and size, a work which in the first stages of the manufacture of the hogshead must be done, and by which a considerable advance is made in fitting and finishing it for the market.

In *United States* v. *Quimby* (4 Wall., 408), decided at the same time, "616 cords of split white-ash timber, chiefly designed to be used in the manufacture of long shovel handles," were held to be within the provision of

the tariff act of March 2, 1861, relating to all articles manufactured wholly or in part not otherwise provided for.

In *Erhardt* v. *Hahn* (14 U. S. App., 117, 120), a manufacture is defined as follows:

> Where an article has been advanced through one or more processes into a completed commercial article known and recognized in trade by a specific and distinctive name other than the name of the material, and is put into a completed shape, designed and adapted for a particular use, it is deemed to be a manufacture.

In that case the articles in controversy were penholder handles, glove-hook handles, shoe-hook handles, knife handles, etc., which had still something further to be added before they could be sold by the retailer. In *In re Herrman* (14 U. S. App., 416); *Arthur* v. *Butterfield* (125 U. S., 70); *Seeberger* v. *Cahn* (137 U. S., 95); and *White* v. *United States* (38 U. S. App., 230), the articles held to be manufactures were mere dress fabrics. In *United States* v. *Schoverling* (146 U. S., 76), they were gunstocks. In *Worthington* v. *Robbins* (139 U. S., 337), certain enamel, not in condition for use as imported, was held to be an article partly manufactured. In *Robertson* v. *Gerdan* (132 U. S., 454), pieces of ivory for piano keys were held dutiable as manufactures of ivory. In *Isaacs* v. *Jonas* (148 U. S., 648), cigarette paper and pasteboard covers of corresponding size, imported separately, and intended to be bound together into cigarette books, were held to be "smokers' articles" under the tariff act of March 3, 1883.

In the case of *In re Kursheedt Manufacturing Company* (14 U. S. App., 35), which held certain velveteen facings to be manufactures, the court said (pp. 38, 39):

> We think the evidence clearly shows that the articles in controversy have lost their commercial identity as velveteens and are a manufactured article. Not only have they been advanced to a form in which they have *acquired a new commercial name, and are adapted for a distinctively new use*, but they have been subjected to a process consisting of several steps, which requires a considerable amount of skill and labor.

In the recent case of *Tide Water Oil Company* v. *United States* (171 U. S., 210), certain box shooks imported from Canada, which were planed and cut into the required lengths and widths for making into boxes, were held to be articles partly manufactured. The court gives the following definition of the word "manufacture" (p. 216):

> The primary meaning of the word "manufacture" is something made by hand, as distinguished from a natural growth; but, as machinery has largely supplanted this primitive method, the word is now ordinarily used to denote an article upon the material of which labor has been expended to make the finished product. Ordinarily the article so manufactured takes a different form, or at least subserves a different purpose from the original materials, and usually it is given a different name. Raw materials may be, and often are, subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product.

Counsel for appellee lays some stress on the fact that the tonguing and grooving process is performed on one machine and substantially at the same time. But this does not affect our contention. Formerly the tonguing and grooving was a separate and considerably more expensive process than now, and lumber so treated was always expressly provided for in the tariff acts, a higher rate of duty being laid thereon than on the merely planed article. It was then plainly regarded as a manufacture, and can it now cease to be so considered simply because the tonguing and grooving is done by another branch of the planing machine, and almost immediately thereafter? "A trifling amount of labor is often sufficient to change the nature of the article and determine its classification." (*Saltonstall* v. *Wiebusch*, 156 U. S., 601, 604.)

The case of *Hartranft* v. *Wiegmann* (121 U. S., 609), relied on by counsel for the appellee, does not conflict with the authorities above cited. The articles there in controversy were shells which had been cleaned, ground, and etched; but, as the court said, "they were still shells," and were held to be "shells not manufactured," and not "manufactures of shells."

II.

THE IMPORTATIONS ARE NOT DRESSED LUMBER WITHIN THE MEANING OF THE ACT.

It is admitted by nearly all of the witnesses that the articles are bought and sold by the thousand feet, like lumber. This appears to be done for convenience of the

trade (p. 108). It is dressed lumber in so far as anything made of wood which has been planed is dressed. As one witness remarked (p. 127):

> It is lumber in a sense that a door is lumber, or moldings are lumber, or the parts of a table before it was put together was lumber, or that my coat is cloth.

It was even maintained (pp. 90, 101) that, in one sense, a floor may be called dressed lumber after it has been laid down. But it is respectfully submitted that an article which has been sufficiently advanced in manufacture to be known by such denominations as "flooring, ceiling," etc., can not properly be called "dressed lumber." The moment it is tongued, grooved, or contains any other evidence of the handiwork of the mechanic than the mere planing, it becomes a manufacture of wood prepared and designed for some evident purpose or use, and is then taken out of the category of lumber "dressed" or "undressed" and its use limited. When a thing is manufactured, at that moment its use becomes restricted and it is intended for some specific purpose on the part of the manufacturer. Rough or dressed lumber may be converted into any use, but when tongued or grooved it becomes a manufacture of wood, and, as has unanimously been testified in this case, is known as flooring, sheathing, etc., and as such is liable to a duty as a manufacture of wood.

The dictionary definitions of the verb "dress" are somewhat indefinite. The Century gives the following: "To cut or reduce to the proper shape or dimensions or evenness of surface, as by planing, chiseling, tooling,

etc., * * * as to *dress* lumber." The Standard: "To cut, plane, or furrow, etc., a surface (as of wood * * *)." Knight's Mechanical Dictionary: "Smoothing the surface of plank or of stone." In an old Treasury decision (S. S. 204, Sept. 14, 1864), referred to in the decision of the Board of General Appraisers in this case, dressed lumber is defined as "lumber, planed, turned, smoothed, or having undergone a similar process, but not mortised, tenoned, tongued, or grooved."

The word "dressed" is evidently intended as equivalent to "planed" in the present act. The tariffs of 1872, 1883, and 1890 provided duties on lumber "planed or finished," and always imposed an additional rate on lumber tongued and grooved. The present act substitutes the word "dressed" for "planed" and omits mention of lumber tongued and grooved, thus leaving it to be classed among the nonenumerated manufactures of wood, or articles not otherwise provided for. "Sugar-box shooks" and "packing-box shooks," dressed lumber in substantially the same stage of manufacture as that now under consideration, are specially mentioned in paragraph 180; and in the free list we find articles of lumber which have advanced so far in manufacture as to acquire a special designation, but which are intended to be admitted free of duty, such as clapboards, pickets and palings, shingles, and staves of all kinds.

Tariff acts are presumed to be framed after a careful examination of commercial conditions, and are to be interpreted in the light which a knowledge of those conditions affords. (*United States* v. *Blumlein*, 14 U. S. App., 101.)

III.

THE EXPERT EVIDENCE SUSTAINS OUR POSITION.

The Board of General Appraisers found that so far as the expert evidence was contradicted the testimony was equally balanced. The disputed testimony does not concern any real question of commercial designation. It is admitted that the term "dressed lumber" would not be a sufficient description of these articles. They are usually ordered either by description or by their specific designation as "flooring." In *Recknagel* v. *Murphy* (102 U. S., 197, 200), Mr. Justice Swayne explains the theory of commercial designation as follows:

> In cases like this, the law recognizes the authority of those engaged in commerce, and adopts, necessarily and as conclusive, the meaning which they have given to words and phrases *employed in their daily business.*

Although the Board of General Appraisers held the conflicting testimony in this case to be inconclusive, and the circuit court threw it out altogether (p. 180), there is some practically uncontradicted expert evidence which bears strongly on the case and is in favor of the Government's contention, namely: that dressing is equivalent to planing; and that this article which has been tongued and grooved, as well as planed, and then cut to lengths for use in laying down a particular floor, has so far proceeded in manufacture as to have received the well-known commercial designation of flooring.

IV.

THE COLLECTOR'S DECISION MUST BE PRESUMED TO BE CORRECT.

It is a well-established rule in customs cases that the presumption is always in favor of the collector's decision. (*Arthur* v. *Unkart*, 96 U. S., 118; *Erhardt* v. *Schroeder*, 155 U.S., 124; *United States* v. *Rosenwald*, 35 U.S. App., 89; *United States* v. *Pickhardt*, Id., 72.)

Counsel for appellee argues the point with much earnestness that the tariff act of 1894 was enacted as a free-trade measure and that its purpose was to reduce duties on articles of general consumption, and it is pointed out that if our contention were sustained and this importation held dutiable as a manufacture of wood the rate of duty thereon would be considerably greater than that imposed by any previous tariff act. His reasoning is upon the assumption that where two or more rates of duty are applicable to an article the lowest rate should prevail, in accordance with past decisions of this court. This presumption, however, was reversed in 1883 by an amendment to section 2499 of the Revised Statutes, and the last sentence of section 4 of the tariff act of 1894 provides that—

> If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

By analogy, the same reasoning should apply when under one provision of the tariff act of 1894 lumber is

placed in the free list, and when manufactured is subject to duty. Moreover, although by placing this article under section 181 the duty would be increased more than 50 cents per thousand feet, there is nothing to show that such was not the express intention of Congress; and while under the former law the rate was lower, there is yet nothing to show that the conditions prevailing at the time of the passage of the act of 1894 were not such as to specially appeal to Congress in favor of a higher rate. Further, while it is conceded that the general purpose of the tariff act of 1894 was to provide for the reduction of duties, a comparison of that act with the tariff of 1890 will show an increase of duty on many articles of general consumption, among which appear the following: *Sawed boards, deals, planks* of cedar, lignum vitæ, * * * and all other cabinet woods, percentage of increase, 66.66; wire rope and strand, made of galvanized steel, etc., increase, 212.58; wire covered with cotton, etc., increase, 140.10; wire cloths, etc., 81.04; brass in bars or pigs, 0.30; rivets of iron or steel, 20.31; cork bark, 160.42.

It is respectfully submitted that the judgment of the circuit court of appeals should be reversed.

HENRY M. HOYT,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1906.

THE UNITED STATES

vs.

FRANK DUDLEY.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

J. E. Tucker,
C. A. Prouty,
Counsel for the Respondent.

Judd & Detweiler, Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES

vs.

FRANK DUDLEY.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The question involved in this case is whether certain imports are free of duty. The imports in question were eight car-loads of spruce lumber, a part of which consisted of planks from 2 to 4 inches in thickness, of varying widths and lengths, and the balance of inch boards from 3 to 5 inches wide, and from 12 to 16 feet in length. The planks were planed on one side and grooved. The boards were planed on one side and tongued and grooved.

The importer contended that these articles were entitled to entry free of duty, under the provisions of paragraph 676 of the act of August 28, 1894, which includes "sawed boards, planks, deals, and other lumber, rough or dressed."

The collector of customs held that they were subject to an *ad valorem* duty of 25 per centum, under the provisions

of paragraph 181, Schedule D, of said act, which imposes that duty upon "house and cabinet furniture of wood, wholly or partly finished, manufactures of wood, or of which wood is the component material of chief value, and not specially provided for in this act."

The importer paid the duty under protest. These protests were considered and acted upon by the board of general appraisers, which sustained the action of the collector of customs. From this decision the importer appealed to the Circuit Court for the district of Vermont. That court reversed the classification of the general board of appraisers and decreed that the articles were free of duty. From this decree an appeal was taken by the Government to the Circuit Court of Appeals for the second circuit. Here the decree of the circuit court was affirmed, and this petition is brought to review that decision.

It is not designed to attempt an argument of the questions involved, but simply to state the general lines upon which that argument has and must proceed, so that the court, in passing upon this petition, may have in mind the nature of these questions.

The Government claimed that the articles were manufactures of wood; the appellee that they were dressed lumber. Forty-seven witnesses were examined, twenty-four by the Government and twenty-three by the importer. All of the Government witnesses testified, several with some reluctance, that lumber planed upon one or two sides was known in the trade as "dressed lumber;" that when the edges were tongued and grooved, or grooved, as in case of the imports in question, it passed from the condition of dressed lumber, and that the imports in question were not known in the trade as "dressed lumber."

The twenty-three witnesses produced by the importer all testified that the articles in question were known in the trade as "dressed lumber." From an examination of the

testimony it is perfectly apparent that an indefinite number of witnesses might be called with the same result.

The appellee insisted that this question was not one of trade designation, nor of the opinion of witnesses, but of the interpretation of this statute upon the undisputed facts in the case, and this was the view taken by the circuit court for the district of Vermont.

Frank Dudley *vs.* United States, 74 Fed. Rep., 548.

The claims of the appellee were as follows:

1. Lumber is divided into two general classes—rough lumber and dressed lumber. Rough lumber is lumber as it comes from the saw. Dressed lumber is lumber as it comes from the planing or dressing machine.

Rough lumber is divided into certain classes, like sills, rafters, overlays, barn boards, fence boards, etc., etc. These names denote the purpose to which lumber of a certain grade and size is adapted and for which it is generally used.

Dressed lumber is in the same manner divided into classes, like flooring, sheathing, etc., etc. Of the importations in question the inch boards were known as flooring, and the plank as factory flooring and factory roofing. These names designate, as in the case of rough lumber, the purpose for which lumber of that kind is adapted and to which it is ordinarily put.

The lumber in question was butted to exact lengths—that is to say, it would be 12, 14, or 16 feet long, as the case might be—and the Government laid great stress upon this as tending to show that it had been set apart and designated for a particular purpose. The testimony showed that rough lumber in precisely the same way was butted to exact lengths, and was to the same extent set apart for a specific purpose. The object of this in both cases was to enable the purchaser to use the lumber with as little waste as possible; but it still required fitting with the plane and saw by the carpenter before it became a part of the permanent structure.

The Government also contended that since this lumber received a definite name, that indicated that it had been set apart for a definite purpose, and had, therefore, become what might be termed a "manufacture" of lumber; but the testimony here showed that while such lumber would ordinarily be used for a particular purpose, it might still be used for a variety of other purposes.

Take, for instance, the flooring, of which a large part of this importation consisted. This is made at one process by running the rough board through a planing machine which smooths at the same time one or both sides, and also either smooths or tongues and grooves the edges. Large quantities of lumber are treated in this way, and it was conceded that when it left the machine it could be used for various purposes, and would be so used according to the grade of the lumber, the better qualities being used for top flooring, and the poorer qualities for under flooring, for boarding the outside of houses, for making boxes, and for almost every purpose for which boards can be employed.

The important thing to notice is that in all cases the article, after passing through the dressing machine, still continues to be lumber. It is known in the trade as lumber. It is bought and sold by the thousand feet as lumber. All the witnesses, with one exception, concurred in this.

It does not become a manufacture of wood until it ceases to be lumber and has impressed upon it the character of some manufactured article.

From these general considerations it must sufficiently appear that the words "lumber, rough or dressed," as they occur in paragraph 676, include all lumber, except such as is otherwise specified. No artificial distinction can be drawn between a board whose sides have been smoothed and that same board when, by running it through the same machine at the same time, its edges have also been dressed.

2. The Government insists that the imports in question were properly classified as manufactures of wood under paragraph 181. If there is any doubt upon this point, it claims that they should be classified under the general section as articles not otherwise enumerated.

Previous tariff acts since 1872 have always contained a paragraph similar to 181. During all this time lumber planed one side and tongued and grooved has been dutiable as such by name. Enormous quantities of lumber are dressed for use in this way. It is incredible that the act of 1894 should have intended to include within this paragraph an article of the general importance of this and one which had always heretofore been referred to specifically. It is equally incredible that Congress should have intended to include an article of such universal use under the general clause which is only intended or supposed to apply to things accidentally omitted from the enumeration.

3. All this is still more apparent from a consideration of the history of the passage of the act of 1894 through Congress. While the statements of different members in debate may not be admissible, it is well settled that the history of the measure itself can be shown when the meaning of the act is doubtful.

American Net & Twine Company *vs.* Worthington, 141 U. S., 473.

Blake *vs.* National Bank, 23 Wallace, 318.

The act of 1872, in the wood schedule, provided for "sawed boards, plank, deals, and other lumber of hemlock, whitewood, sycamore, and basswood, $1 per thousand feet of board measure. * * * *Provided*, That when lumber of any sort is planed or finished, in addition to the rates herein provided, there shall be levied and paid for each side so planed or finished 50 cents per thousand feet; and if planed on one side and tongued and grooved, $1 per thousand feet;

and if planed on two sides and tongued and grooved, $1.50 per thousand feet." The act of 1883 was identical with the above.

The act of 1890 provided for "sawed boards, plank, deals, and other lumber of hemlock, whitewood, sycamore, white pine, and basswood, $1 for one thousand feet, board measure; * * * but when lumber of any sort is planed or finished, in addition to the rates herein provided, there shall be levied and paid for each side so planed or finished 50 cents per one thousand feet, board measure; and if planed on one side and tongued and grooved, $1 per thousand feet, board measure; or if planed on two sides and tongued and grooved, $1.50 per thousand feet, board measure."

As the present law originally passed the House of Representatives, it contained paragraph 181 as it now stands. Paragraph 676 covered "sawed boards, plank, deals, and other lumber." Paragraph 178 provided for "lumber of any sort, planed or finished. For each side so planed or finished 50 cents per thousand feet, board measure; and if planed on one side and tongued and grooved, $1 per thousand feet, board measure; and if planed on two sides, tongued, and grooved, $1.50 per thousand feet, board measure."

In the Senate, upon motion of Senator Allen, of Nebraska, paragraph 178 was stricken out, and paragraph 676 was amended by adding after the word "lumber" the words "rough or dressed," so as to make that paragraph read as it now does. Is it not manifest that the intention of this amendment was to admit free of duty under paragraph 676 what would have been dutiable under paragraph 178?

The value of the lumber in question is some $10 per thousand feet, and the duty assessed $2.50 per thousand feet.

Neither the present law as it came from the House of Representatives nor any previous tariff act had ever imposed a duty upon such lumber of more than $1 per thousand feet in excess of the duty upon rough lumber—that is,

the effect of this amendment was to increase the duty upon an every-day necessity of universal consumption two and one-half times. Is it possible that a free-trade Congress, in amending a free-trade tariff bill in order to secure the vote of a free-trade Populist, intended to bring about this astonishing result?

It has been said by this court that the jurisdiction here invoked should be exercised "sparingly and with great caution and only in cases of peculiar gravity and general importance or in order to secure uniformity of decision."

American Construction Company *vs.* Jacksonville, Tampa & Key West Railway Co., 148 U. S., 372, 383.

There is nothing in this case which calls for the exercise of that jurisdiction. The question is simply upon the interpretation of a statute which has practically ceased to exist. The amount involved, although considerable to an individual, is insignificant to the Government. It is respectfully submitted that there is no public exigency which requires that the appellee should be further harassed by a continuance of this litigation.

C. A. PROUTY,
Counsel for the Respondent.

J. P. TUCKER,
Of Counsel.

No. 103.

Brf. of Prouty for Appellee.

Office Supreme Court U. S.
FILED
NOV 19 1898
JAMES H. McKENNEY,
Clerk.

Filed Nov. 19, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 103.

UNITED STATES, APPELLANT,

vs.

FRANK DUDLEY, APPELLEE.

BRIEF FOR THE APPELLEE.

C. A. PROUTY,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-17-'98

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 103.

UNITED STATES, APPELLANT,

vs.

FRANK DUDLEY, APPELLEE.

BRIEF FOR THE APPELLEE.

The question in this case arises upon the classification of certain importations under the tariff act of August 28, 1894. The articles were eight car-loads of spruce lumber. One car-load consisted of boards one inch in thickness, four and five inches in width, and from twelve to sixteen feet in length. They were planed on one side and tongued and grooved. The second car-load consisted of plank two inches in thickness, from six to ten inches in width, sixteen feet long. The third car-load was of plank three inches thick, from six to nine inches in width, sixteen feet long. The foregoing two cars of plank were planed on one side and

tongued and grooved. The remaining five cars consisted of plank three inches in thickness, from six to eleven inches in width, and ten, sixteen, and twenty feet in length. These were planed on one side and grooved (Record, pp. 6, 7, 8).

The collector assessed a duty of 25 per cent. *ad valorem* upon these importations under paragraph 181, Schedule D, which fixes that the rate upon "house or cabinet furniture of wood, wholly or partly finished, manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act." The appellee contended that these imports were entitled to entry free of duty under the provisions of paragraph 676, which provides for "sawed boards, plank, deals, and other lumber, rough or dressed." The duties were paid under protest and the protest considered by the Board of United States General Appraisers, who sustained the action of the collector. Thereupon the appellee began proceedings in the circuit court of the United States to correct the action of the Board of General Appraisers, which resulted in a decree of the circuit court reversing the classification of the collector and holding that the imports should have been classified under paragraph 676. From this decision the Government appealed to the United States circuit court of appeals for the second circuit. In that court the case was heard before two judges who were divided in opinion, and the decree of the circuit court was thereupon affirmed.

The only question is whether these importations should have been classified under paragraph 676; in other words, whether they were dressed lumber.

The claim of the appellee is this: All lumber is divided into two general classes—rough and dressed. Rough lum-

ber is lumber as it comes from the saw; dressed lumber is lumber as it comes from the planing machine.

Sawed lumber is divided into many subordinate classes, like rafters, floor joist, fence boards, barn boards, &c., the name indicating the purpose for which lumber of that particular size and shape is especially adapted and the use to which it is ordinarily put. In the same way dressed lumber is divided into various classes, like flooring, sheathing, ceiling, &c. Here, too, the name indicates the purpose to which lumber dressed in that particular way is ordinarily put.

These facts are testified to more or less in detail by all the witnesses of the appellee. Perhaps the testimony of Mr. Ford is as full in this respect as that of any witness (Record, p. 162). The facts testified to by Mr. Ford and the other witnesses for the appellee are not controverted by those for the Government, except as to the use of the word "dressed." They assert, apparently, that this word refers merely to the smoothing of one or both sides of the lumber; that dressed lumber is lumber of which one or both sides has been planed; that when anything more is done to it, like tonguing and grooving the edges, or grooving the edges, as in case of these importations, it then passes beyond what is known in the trade as "dressed lumber" and becomes something else. The contention of the appellee is that "dressed" is a broad and comprehensive term, as used in paragraph 676, embracing whatever is done to the lumber in passing it through the planing machine, while the Government contends that it has a narrow signification and refers simply to the surface planing of one or both sides.

I.

The word "dress" as applied to lumber is used in two senses—everywhere in the broad and popular sense contended for by the appellee and in some sections in the narrow sense claimed by the Government.

Among other definitions given by Worcester's Dictionary for the word "dress" is this: "To prepare for any purpose; to fit for use." The Century Dictionary gives the following definition, among others: "5. To prepare or make ready; treat in some particular way and thus fit for some special use or purpose." And as explanatory of the above the following illustration is given: "(*d*) To cut or reduce to the proper shape or dimensions, or evenness of surface, as by planing, chiseling, tooling, &c.; trim; finish off; put the finishing touches to; as to dress timber; to dress a millstone."

The record in this case contains the testimony of forty-seven witnesses, twenty-three of whom were produced by the appellee and twenty-four by the Government. The twenty-three witnesses of the appellee all testified that the word "dress" as applied to lumber is used in the broad sense of to prepare for some special use. Flooring is lumber dressed for the purpose of being laid into floors; ceiling for the purpose of putting up the ceilings of rooms, &c.

The twenty-four witnesses of the Government all testified in substance that "dress" is applied only to the process of smoothing one or both sides of the lumber and bringing it to an even thickness. This comes, in substance, to saying that "dress" and "plane" are synonymous terms.

The witnesses upon both sides are persons of intelligence and standing. Those who have testified in behalf of the Government are, for the most part, interested in extensive establishments devoted to the dressing of lumber in various ways, and they, of course, had a vital interest in securing that interpretation of the tariff for which they were moving. While, however, this might color to some extent their testimony, it is not to be suggested that they would for that reason state as a fact what was absolutely without foundation. The fair and reasonable inference from all this testimony is that the word "dress" is used in both senses. It is sometimes and in some sections used as a synonym for the word "plane;" it is everywhere used in the broad sense contended for by the appellee.

There are many things in the testimony of the Government itself which show that the word is used in both senses. Oscar C. Miller is one of the twenty-four. He testified, among other things, as follows:

"Direct examination:

"Q. Were you familiar with the words 'dressed lumber' as used in the lumber trade at the time of the passage of the tariff act in August, 1894, and prior thereto and at the present time?

"A. I think we used the word 'plane' more than we did 'dressed.'

"Q. You regard those two terms as synonymous?

"A. I do; yes, sir."

* * * * * * *

"Cross-examination:

"Q. You say that you understand the word 'planed' and the word 'dressed' as being synonymous?

"A. As meaning one and the same thing as applied to lumber.

"Q. Has the term 'dressed' as applied to lumber a general, broad significance?

"A. Well, I am inclined to think it has in the same sense that you use the word 'lumber.'"

Record, p. 152.

D. W. Robinson, another of the twenty-four, testified, upon cross-examination, in speaking of the purpose for which flooring was tongued and grooved, as follows:

"Q. What is the purpose of putting on those sides there—tonguing and grooving?

"A. To keep the flooring down, I suppose. What do you mean?

"Q. What is the purpose of putting that on?

"A. To manufacture that for an article of commerce known as flooring.

"Q. Is that the only purpose?

"A. That is the only purpose I know of.

"Q. Is it not the purpose to fit that for a particular purpose—that is, to wit, a flooring, just the same as you smooth it?

"A. Yes, sir; of course.

"Q. Supposing you jointed it instead of that, what would that be?

"A. In some sections we *dress* flooring that way."

Record, p. 156.

It appears, therefore, that Mr. Robinson used the word "dress" as applicable to the process of fitting the rough board for flooring.

The order for the first car-load of lumber involved in this case called for one car-load of planed and matched boards, "dry and well dressed" (Record, p. 6). That expression was used by the customer without any reference to this suit. Can there be any question that the word "dressed" applied to the whole process, the tonguing and grooving of the edges as well as the smoothing of the surface, and that it was properly so applied?

II.

This is not a question of trade names.

It is not claimed that lumber is bought and sold as "dressed lumber" simply. To order a car-load of dressed lumber would mean nothing more than it would to order a car-load of rough lumber.

This was so held by the circuit court (Record, p. 178).

If this were a question of trade names the commercial or trade designation would not prevail over the popular meaning unless it were definite, uniform, and general. This case presents no one of those elements.

Maddock *vs.* Magone, 152 U. S., 368.

III.

The importations were lumber.

All the witnesses, with possibly one or two exceptions, agree about this. These boards and planks have all the incidents of lumber. They are known in the trade as lumber, advertised as lumber, handled as lumber, shipped as lumber, bought and sold by the thousand feet like lumber. This general proposition, about which no question is made, should be kept firmly in mind.

IV.

The work on these importations necessary to bring them from the sawed boards or planks to the condition in which they were imported was all done as part of one process by passing the boards or planks through one machine a single time.

There is no serious dispute about this. Some of the Government witnesses appeared to intimate that the process of matching is a further process, which takes place after the lumber is planed. Thus Mr. Loomis testifies:

"Q. Look at Exhibit 1.
"A. Yes, sir.
"Q. To what class of lumber would you state that belonged?
"A. Flooring, tongued and grooved. This lumber is first dressed, and then passed on and is tongued and grooved. It is not done by the same cylinder.
"Q. Is the process of planing and tonguing and grooving done at the same time?
"A. Not simultaneously. It is done on the same machine, but after it is dressed it is passed on to the matcher and tonguer and the groover."
Record, p. 110.

Of course the two operations are not performed by the same cylinder. One cylinder surfaces one side, another cylinder surfaces the other side. These cylinders are horizontal. Two other cylinders plane the edges or tongue and groove the edges, as the case may be, and these cylinders are vertical and are usually placed beyond the surfacing cylinders. But the machine is all one and the process is all

one, although the treatment of the edges may occur an instant after that of the surfaces.

It is also true that all planing machines do not perform all these different processes. A planer may be constructed with a view to surfacing merely one side and nothing else, or both sides and nothing else, or it may perform all the different operations, and the cost of the machine usually depends upon its complexity, but it is always one machine and is always known as a planing machine (Record, pp. 163, 173).

V.

The incidents upon which the Government relies to control the classification of this lumber have no weight.

1. Great stress was laid upon the fact that the lumber was of a given length. Upon pages 6, 7, and 8 of the Record we have, among other things, a minute of the orders to fill which the different cars were sent. The order for the first car was "1 car, P. 1 S. & M., dried and well dressed"—that is, the customer ordered one car-load of boards, planed on one side and matched or tongued and grooved. Not one word is said about the length or the width of any single piece in that car, and in all probability it was not of the slightest consequence to the customer what the length or width of any single piece was. In filling that order the mill sent a certain number of pieces four inches wide and twelve feet long and a certain number four inches wide and sixteen feet long, &c. The invoice which accompanied the car, or probably which was

sent to the customer, shows the number of pieces, the length, and the width of each piece. That was done, however, not in obedience to the wishes or wants of the customer, but for the mutual convenience of the mill and the customer, as the best way of tallying the quantity of lumber sent. If the car-load had been composed of rough lumber of any kind whatever it would have been tallied in exactly the same way and an invoice of exactly the same sort would have been sent.

The same thing is true of three car-loads of plank. The orders simply call in each case for one car-load to be worked from a mill run of the cut of the year 1895 and to be planed one side and matched. Nothing is said here about widths or lengths. The invoice simply shows what widths and what lengths were actually sent. The orders for the remaining four cars required that the plank should be butted to exact lengths. The width is not specified. In billing these orders the two lengths sent were ten and twenty feet. These planks were to be used for the purpose of laying under floors in factory buildings. It is probable that in constructing such mills the floor joist are placed a uniform distance apart, and these planks are required of a uniform length, so that they can be laid down and nailed in place to receive the upper floor without further preparation.

Does that make them any the less lumber? Suppose they had been butted to exact lengths for exactly that purpose and planed on one side without being grooved, does the Government contend that they would have been something else than lumber and not entitled to free entry under paragraph 676? Not at all. The claim is, not that the making of them the exact length, but that the treatment of the edges

by grooving, takes them out of the free list and puts them under some dutiable classification.

The testimony shows that rough lumber is usually manufactured to an exact length for the same reason that these factory floors are so made. It is probably done much oftener than in case of dressed lumber, for in most instances dressed lumber requires some additional fitting with the saw of the carpenter before it can be used, whereas rough lumber can often be put up without such fitting. A fence board is of a certain length, so that it may be nailed onto the posts without any further preparation. The boards used in covering the outside of a house before the clap-boards are laid on are of a given length, so that they may be put on without the labor of fitting, but nobody ever thought that they were any the less lumber or any the less entitled to free entry. It is evident that the mere fact that these pieces were finished to an exact length is immaterial.

2. Some stress is also laid upon the fact that they are a given width, but this seems to be entirely for the convenience of the trade. In no case under consideration does the order itself specify the width, and in no case apparently is it at all material what the width is. Certainly no significance can be attached to this circumstance.

3. The Government seems to attach the most importance to the fact that these importations are known in the trade by a specific name. The inch boards are commonly called flooring and the plank factory flooring and factory roofing. They are, it is said, flooring, not dressed lumber.

This entirely misapprehends that use of the term "dressed" which the appellee insists should be applied in this case. To dress lumber is to fit it for these various uses. The name indicates the use to which it has been adapted by the process of dressing. Flooring is dressed lumber; sheathing, ceiling, casing—all this is dressed lumber, and has not ceased to be such by reason of the fact that it is known in the trade under these different names. A rafter is none the less rough lumber because it is bought and sold as a rafter, nor does a fence board cease to be entitled to free entry under paragraph 676 because it is called a fence board.

VI.

The plain intent of the act of 1894 was to admit all lumber, except certain specified cabinet woods, free of duty. This is accomplished by giving to the word "dressed" in paragraph 676 the signification claimed by the appellee.

The following are the first seven sections from the wood free list, U. S. Stat. at Large, vol. 28, p. 545:

"672. Logs, and round manufactured timber not specially enumerated or provided for in this act.

"673. Firewood, handle bolts, heading bolts, stave bolts, and shingle bolts, hop poles, fence posts, railroad ties, ship timber, and ship planking, not specially provided for in this act.

"674. Timber, hewn and sawed, and timber used for spars and in building wharves.

"675. Timber, squared or sided.

"676. Sawed boards, plank, deals and other lumber, rough

or dressed, except boards, plank, deals and other lumber of cedar, lignum vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods.

"677. Pine clap-boards.

"678. Spruce clap-boards."

Is it possible to read the above sections and still believe that articles like those under consideration are dutiable? Does it not appear from the context itself that the words "rough or dressed" are used in the broad sense of two general classes into which all lumber falls? Was it not the manifest intent of the law-maker to admit free of duty all lumber, whether in its rough state or whether so altered as to be adapted to the purposes for which lumber in its finished state is ordinarily used? These inch boards were still boards. Nobody would for a moment call them anything else. These planks were still planks. The Government does not deny this. In other words, they were still *lumber*, and by the plain and unambiguous language of the statute they are free.

VII.

The importations were not manufactures of wood under paragraph 181.

If these imports are not properly classified under paragraph 676 of the free list, what is their classification? The general appraisers said they were manufactures of wood and dutiable under paragraph 181. Such was evidently the idea of the Government witnesses and of the attorneys employed

to represent the Government in the early history of this proceeding.

The entire wood schedule consists of four sections and is given here, U. S. Stat. at Large, vol. 28, p. 521:

"179, Osier or willow, prepared for basket-makers' use, twenty per centum ad valorem; manufactures of osier or willow, twenty-five per centum ad valorem; chair cane, or reeds, wrought or manufactured from rattans or reeds, ten per centum ad valorem.

"180. Casks and barrels, empty, sugar box-shooks, and packing boxes and packing box-shooks, of wood, not specially provided for in this act, twenty per centum ad valorem.

"180½. Tooth picks of vegetable substance, thirty-five per centum ad valorem.

"181. House or cabinet furniture, of wood, wholly or partly finished, manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem."

It is admitted that these importations are still lumber, and that fact of necessity excludes the idea that they are manufactures of wood, for when lumber becomes a manufacture it ceases to be lumber. The lumber of which a wood table is composed was no longer lumber when it became a table. A manufacture of wood is lumber which has been so wrought upon that it ceases to be lumber and becomes something else. There are doubtless many instances in which it might be difficult to say whether the thing was still lumber or whether it had become in fact a manufacture of wood, but these importations present no such difficulty.

This idea is illustrated by the case of Hartranft *vs.* Wiegman, 121 U. S., 615. The question there was whether certain shells which had been etched or ground or otherwise treated upon the surface to produce certain results had become a manufacture. The court held that they had not;

that they were still shells. Work had been expended upon them; the value of the shell had been increased, but the thing still remained a shell and was dutiable as a shell. The court in that case said (p. 615): "They were still shells. They had not been manufactured into a new and different article, having a distinctive name, character, or use from that of a shell. The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws."

These importations had not become anything other or different from lumber. They had not been designated and set apart as part of a particular thing. Consider, for instance, the planed and matched inch boards. The testimony shows that lumber for many purposes is planed and matched in exactly the way these were. If a log run of boards had been put through that same machine at the same time, the various uses to which that product would have been put depend upon the quality of the lumber itself, not upon the way in which it is dressed. According to its grade, some of it might have been used for a top floor, some of it for a floor lining, some of it to sheathe the inside of a room or to board the outside of a house. In fact, there is hardly any purpose to which a planed board could be put that would not be answered by the material which composed that car-load.

VIII.

The importations cannot be classified under section 3.

It seems to have occurred to counsel for the Government, upon an examination of the record, that it would be impossible to classify the imports in question under paragraph 181. Certainly there was no other paragraph in the wood schedule which was at all applicable to them. If they were dutiable at all, therefore, it followed that they must be classified under section 3, which includes articles accidentally omitted in the preparation of the various schedules.

If the claim of the Government that these imports should be classified as a manufacture of wood was remarkable, the claim that they ought to be classified under section 3, as something which escaped the notice of Congress altogether, is astounding. It must be borne in mind that imports like these are not an occasional affair. They are matters of everyday occurrence. One of the witnesses for the Government testified that he had manufactured millions of feet of factory flooring. It appears from the testimony of the other Government witnesses that they own immense plants for the manufacture of lumber into those forms which it is sought to exclude from the United States by the application of this tariff. Millions upon millions of feet of lumber are dressed every year which would be made dutiable upon the contention of the Government and free upon the claim of the appellee. As will be seen in a moment, there is no tariff,

beginning with that of 1872, in which tongued-and-grooved lumber has not been made subject to duty *eo nomine*. The present act as it passed the House contained a paragraph which imposed a duty upon lumber so dressed. Few subjects were more discussed before the committee than this very question, whether lumber like that involved in this case and of similar kinds should be placed upon the free list or should be made dutiable. Yet we are forced to conclude, if the contention of the Government is sustained, that Congress finally entirely overlooked this great subject of commerce. Certainly the court will not presume that it was overlooked if by any reasonable construction it can arrive at the other conclusion.

IX.

The history of the act in Congress shows that the contention of the appellee is right.

If any doubt can remain as to the sense in which the word "dressed" is used in paragraph 676, it must be dispelled by an examination of the progress of the act through Congress. While the statements of individual members of Congress made in debate upon the floor are not admissible upon the interpretation of a statute, it is well settled that the history of the measure in Congress, the state of the times in which the law was enacted, and the purposes in view in its enactment may be properly considered.

American Net and Twine Co. *vs.* Worthington, 141 U. S., 468, 473.

Blake *vs.* National Bank, 23 Wallace, 318.

The act of 1872, in the wood schedule, provided for "sawed boards, plank, deals and other lumber of hemlock, white-wood, sycamore and bass-wood, one dollar per thousand feet board measure. * * * *Provided*, That when lumber of any sort is planed or finished, in addition to the rates herein provided there shall be levied and paid for each side so planed or finished fifty cents per thousand feet; and if planed on one side and tongued and grooved, one dollar per thousand feet; and if planed on two sides and tongued and grooved, one dollar and fifty cents per thousand feet." The act of 1883 was identical in this particular with that of 1872. The act of 1890 provided in the wood schedule for "sawed boards, plank, deals and other lumber of hemlock, white-wood, sycamore, white-pine, and bass-wood, one dollar per one thousand feet board measure. * * * But when lumber of any sort is planed or finished, in addition to the rates herein provided, there shall be levied and paid for each side so planed or finished, fifty cents per one thousand feet board measure, and if planed on one side and tongued and grooved, one dollar per thousand feet board measure; or if planed on two sides and tongued and grooved, one dollar and fifty cents per thousand feet board measure."

Since 1872, therefore, the tonguing and grooving of lumber had increased the duty fifty cents per thousand feet, board measure.

As the present statute originally passed the House of Representatives, it contained paragraph 181 exactly as it now stands. Paragraph 676 covered "sawed boards, plank, deals and other lumber," but did not contain the words "rough or dressed." Paragraph 178 provided for "lumber of any sort, planed or finished. For each side so planed or finished,

fifty cents per thousand feet board measure; and if planed on one side and tongued and grooved, one dollar per thousand feet board measure; and if planed on two sides and tongued and grooved, one dollar and fifty cents per thousand feet board measure" (Tariff bill, H. R. 4864, February, 1894).

In the Senate, upon motion of Senator Allen, of Nebraska, paragraph 178 was stricken out and there were added to paragraph 676 the words "rough or dressed" (Congressional Record, vol. 26, pp. 5504, 6564–'5, 7106). Can any other inference be made than that in striking out paragraph 178 and adding these words to 676 the purpose was to make free under 676 what was dutiable under 178?

It should be noted in this connection that in previous tariff legislation the word "planed" had been invariably used to designate the smoothing of lumber on one or both sides, and that was the word employed in paragraph 178. If Congress had purposed to admit free merely lumber that was smoothed, as the Government contends, it would have used the word "planed," not "dressed."

It is well understood that the act of 1894 was enacted as a free-trade measure, and that its purpose was to reduce the duty upon articles of general consumption. The articles in question are of universal use. That is especially true of the tongued and grooved boards. At no time since 1872 had the fact that the edges of boards were tongued and grooved increased the duty more than fifty cents per thousand feet, board measure. It appears from the specifications already referred to that the value of this lumber was about $10 per thousand feet. The duty imposed would therefore be $2.50 per thousand feet. That is to say, this tariff act increased the duty upon this article of prime necessity five fold more

than it ever had been under any system of protective duties. If the Fifty-third Congress actually enacted such a measure, it must, of course, be enforced, no matter how severely it may bear upon individuals or industries; but will the court come to the conclusion that such was the intention so long as any other reasonable course is open to it?

X.

If the question is doubtful, that doubt should be resolved in favor of the appellee.

American Net and Twine Co. *vs.* Worthington, 141 U. S., 468.

Hartranft *vs.* Wiegman, 121 U. S., 609.

United States *vs.* Isham, 17 Wall., 496, 504.

C. A. Prouty,
Of Counsel.

UNITED STATES *v.* DUDLEY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 108. Argued April 19, 1899. — Decided May, 22, 1899.

Sawed boards and plank, planed on one side and grooved, or tongued and grooved, should be classified under the tariff act of August 28, 1894, 28 Stat. 508, as dressed lumber, and admitted free of duty.

THIS case originated in a petition filed in the Circuit Court of the United States for the District of Vermont, for the review of a decision of the board of general appraisers to the effect that certain imports made by the petitioner into the port of Newport, of "sawed boards and plank, planed on one side, tongued and grooved," and entered as "dressed lumber," were not entitled to be admitted free of duty as "sawed boards, plank, deals and other lumber, rough or dressed," under the tariff act of August 28, 1894.

In June, 1895, Dudley imported from Canada eight carloads

of boards and plank, planed on one side and grooved, or tongued and grooved. The collector imposed a duty of twenty-five per cent upon this lumber as a "manufacture of wood," under paragraph 181 of the tariff act of August 28, 1894, c. 349, 28 Stat. 509, 521, which reads as follows: "House or cabinet furniture, of wood, wholly or partly finished, manufactures of wood or of which wood is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem."

The importer protested, claiming that they should have been imported free of duty as "dressed lumber" under paragraph 676.

The board of general appraisers sustained the action of the collector, and the importer filed this petition for review in the Circuit Court, which reversed the decision of the board. On appeal by the United States to the Circuit Court of Appeals, where the cause was heard by two judges, who were divided in opinion, the judgment of the Circuit Court was affirmed.

Whereupon the United States applied for and were granted a writ of certiorari from this court.

Mr. Assistant Attorney General Hoyt for the United States.

Mr. C. A. Prouty for Dudley.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

The imports in this case were eight carloads of spruce board and plank, planed on one side, and tongued and grooved. They varied from one to three inches in thickness; from four to eleven inches in width, and from twelve to twenty feet in length. Some were "butted to exact lengths." They were prepared for use by what is known as a "flooring machine," which is a combination of a simple planing machine with a matching — or tonguing and grooving — machine. Some of the smaller mills use separate machines for planing and matching, the combination machine seeming to be of comparatively

recent origin. The boards were adaptable for flooring, ceiling, sheathing, etc.

They were assessed for duty under paragraph 181 of the tariff act of August 28, 1894, which imposed a duty of twenty-five per cent ad valorem upon "house or cabinet furniture, of wood, wholly or partly finished, manufactures of wood or of which wood is the component material of chief value, not specially provided for in this act."

Upon the other hand, the importer insisted that they should have been admitted free of duty under paragraph 676, which exempts "sawed boards, plank, deals and other lumber, rough or dressed," except certain lumber of valuable cabinet woods.

Forty-seven witnesses were examined before the board of general appraisers, twenty-three of whom testified that lumber which had been planed, grooved, tongued or beaded was still "dressed lumber," even when finally shaped for the carpenter to put together in roofing, flooring, ceiling, etc., and twenty-four testifying, in substance, that the term was only applicable to such as had been merely planed upon one or both sides, and brought to an even thickness. It was admitted by witnesses upon both sides that in ordering such articles the term "dressed lumber" would not sufficiently describe them, and that they were usually ordered by description or by their specific designation, as flooring, etc.

Ordinarily, the fact that an article in the process of manufacture takes a new name is indicative of a distinct manufacture, as was intimated in *Tide Water Oil Co.* v. *United States*, 171 U. S. 210, but we do not think it important in this case that "dressed lumber" is divisible into flooring, sheathing and ceiling, since sawed lumber is none the less sawed lumber, though in its different forms and uses it goes under the names of beams, rafters, joists, clapboards, fence boards, barn boards and the like. In other words, a new manufacture is usually accompanied by a change of name, but a change of name does not always indicate a new manufacture. Where a manufactured article, such as sawed lumber, is usable for a dozen different purposes, it does not ordinarily become a new manufacture until reduced to a condition where it is used for one

thing only. So long as "dressed lumber" is in a condition for use for house and ship building purposes generally, it is still "dressed lumber;" but if its manufacture has so far advanced that it can only be used for a definite purpose, as sashes, blinds, mouldings, spars, boxes, furniture, etc., it becomes a "manufacture of wood." It follows that the words "flooring, ceiling, sheathing," do not under this act describe a new manufacture, but rather the different purposes for which sawed lumber may be used. It is much like the commercial division of lumber into "selects, common and culls," which are all lumber, but of different qualities. None of these are in reality new names, but merely specifications of the more general term "lumber." Indeed a manufacturer receiving an order for lumber could not possibly fill it to the satisfaction of his customer, without knowing the purpose for which it was designed, or the quality desired.

The fact that "dressed lumber" is ordered under the names of flooring, ceiling, sheathing, does not indicate that it is not still "dressed lumber," but rather that it is of a quality or width specially adapted to those purposes. Had it been of a particular quality, width and thickness, and sawn into lengths which would make it usable only for the manufacture of boxes, perhaps it might be termed a "manufacture of wood" for the purposes of this act. It is true that the lumber in question was in a condition to be used for flooring without further manufacture, except such reductions in length as the dimensions of the room might require; but it was also usable for ceiling, sheathing and for similar purposes with no further alterations. Had it so far been changed as to be serviceable for only one thing, it is possible that it might be regarded as a separate and independent manufacture, though under the case of *Tide Water Oil Co.* v. *United States*, 171 U. S. 210, this may admit of some doubt. But while lumber planed upon one or both sides may be "dressed lumber," we think that when tongued and grooved it is still "dressed lumber," and not a new and distinct manufacture. In other words, that tonguing and grooving is an additional dressing, but it does not make it a different article. Lumber treated in this

way is still known in the trade as lumber; advertised as lumber; handled as lumber; shipped as lumber; bought and sold by the thousand feet like lumber.

We also think that some light upon the proper construction of the words "manufacture of wood" in paragraph 181 is afforded by the fact that it is used in connection with "house or cabinet furniture of wood, wholly or partly finished," and is followed by the words "or of which wood is the component material of chief value." This would indicate an article "made up" of wood analogous to furniture or other article in which wood is used alone or in connection with some other material. It seems to us quite clear that it could not have been intended to apply to lumber which had only passed beyond the stage of planed lumber by being tongued and grooved.

Upon the facts of the present case we are of opinion that the imports in question should have been classified as "dressed lumber," and the judgment of the Circuit Court of Appeals is therefore

Affirmed.